

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF:

██████████,

Appellant

Docket No. 2010-14786 HHS
Case ██████████

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.*, upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. ██████████ appeared as the Appellant's representative and as a witness for the Appellant. ██████████ appeared and testified. ██████████ appeared as a witness for the Appellant. ██████████, Appeals Review Officer, represented the Department. ██████████, Adult Services Worker, ██████████, Registered Nurse DCH Home Help Services Program, and ██████████, Home Help Program Specialist, appeared as witnesses for the Department.

ISSUE

Did the Department properly reduce Home Help Services payments to the Appellant?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. The Appellant is a Medicaid beneficiary.
2. The Appellant is a ██████████ man who has been diagnosed with muscular dystrophy. (Exhibit 1, page 20)
3. The Appellant is a quadriplegic who is ranked as a level 5 for all activities of daily living and instrumental activities of daily living. (Exhibit 1, page 18)
4. On ██████████, a DHS Adult Services Worker (worker) made a visit to the Appellant's home to conduct a Home Help Services assessment. (Exhibit 1, page 15)

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5. On [REDACTED], the worker requested approval for the Appellant's case from the Department of Community Health (DCH) central office due to an increase in the pay rate for HHS providers effective November 2009. The worker requested a total of [REDACTED] hours per month. (Exhibit 1, pages 36-37 and 44)
6. The Registered Nurse (RN) who reviewed the Appellant's case requested additional information from the worker, which was received. (Exhibit 1, pages 12, 24, 28-34)
7. As a result of her review, the RN determined the Appellant should receive [REDACTED] hours per month. The RN's revisions to the requested time and task hours included: eliminating the HHS hours for eating and feeding as all hours for this activity should be included in the task of eating resulting in an overall reduction; reducing the HHS hours for the tasks of bowel program, mobility, medications, suctioning, and specialized skin care, and increasing the HHS hours for grooming, toileting and transferring. (Exhibit 1, pages 16, 24-25, and 44)
8. On [REDACTED], the Department sent an Advance Negative Action Notice notifying the Appellant that his Home Help Services payments would be reduced to [REDACTED] per month, effective [REDACTED]. (Exhibit 1, pages 5-9)
9. On [REDACTED], the State Office of Administrative Hearings and Rules received the Appellant's Requests for Hearing. (Exhibit 1, page 4)

CONCLUSIONS OF LAW

The Medical Assistance Program is established pursuant to Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). It is administered in accordance with state statute, the Social Welfare Act, the Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

Home Help Services (HHS) are provided to enable functionally limited individuals to live independently and receive care in the least restrictive, preferred settings. These activities must be certified by a physician and may be provided by individuals or by private or public agencies.

Adult Services Manual (ASM 363, 9-1-08), pages 2-5 of 24 addresses the issue of assessment:

COMPREHENSIVE ASSESSMENT

The Adult Services Comprehensive Assessment (FIA-324) is the primary tool for determining need for services. The comprehensive assessment will be completed on all open cases, whether a home help payment will be made or not. ASCAP, the automated workload management system provides the format for the comprehensive assessment and all information will be entered on the computer program.

Requirements for the comprehensive assessment include, but are not limited to:

- A comprehensive assessment will be completed on all new cases.
- A face-to-face contact is required with the client in his/her place of residence.
- An interview must be conducted with the caregiver, if applicable.
- Observe a copy of the client's social security card.
- Observe a picture I.D. of the caregiver, if applicable.
- The assessment must be updated as often as necessary, but minimally at the six-month review and annual redetermination.
- A release of information must be obtained when requesting documentation from confidential sources and/or sharing information from the department record.
- Follow specialized rules of confidentiality when ILS cases have companion APS cases.

Functional Assessment

The **Functional Assessment** module of the **ASCAP** comprehensive assessment is the basis for service planning and for the HHS payment.

Conduct a functional assessment to determine the client's ability to perform the following activities:

Activities of Daily Living (ADL)

- Eating
- Toileting
- Bathing
- Grooming
- Dressing
- Transferring
- Mobility

Instrumental Activities of Daily Living (IADL)

- Taking Medication
- Meal Preparation and Cleanup
- Shopping
- Laundry
- Light Housework

Functional Scale ADL's and IADL's are assessed according to the following five-point scale:

1. Independent
Performs the activity safely with no human assistance.
2. Verbal Assistance
Performs the activity with verbal assistance such as reminding, guiding or encouraging.
3. Some Human Assistance
Performs the activity with some direct physical assistance and/or assistive technology.
4. Much Human Assistance
Performs the activity with a great deal of human assistance and/or assistive technology.
5. Dependent
Does not perform the activity even with human assistance and/or assistive technology.

Note: HHS payments may only be authorized for needs assessed at the 3 level or greater.

Time and Task

The worker will allocate time for each task assessed a rank of 3 or higher, based on interviews with the client and provider, observation of the client's abilities and use of the reasonable time schedule (RTS) as a guide. The RTS can be found in **ASCAP** under the **Payment** module, Time and Task screen.

IADL Maximum Allowable Hours

There are monthly maximum hour limits on all IADLs except medication. The limits are as follows:

- 5 hours/month for shopping
- 6 hours/month for light housework
- 7 hours/month for laundry
- 25 hours/month for meal preparation

These are maximums; as always, if the client needs fewer hours, that is what must be authorized. Hours should continue to be prorated in shared living arrangements.

Service Plan Development

Address the following factors in the development of the service plan:

- The specific services to be provided, by whom and at what cost.
- The extent to which the client does not perform activities essential to caring for self. The intent of the Home Help program is to assist individuals to function as independently as possible. It is important to work with the recipient and the provider in developing a plan to achieve this goal.
- The kinds and amounts of activities required for the client's maintenance and functioning in the living environment.
- The availability or ability of a responsible relative or legal dependent of the client to perform the tasks the client does not perform. Authorize HHS **only** for those services or times which the responsible relative/legal dependent is unavailable or unable to provide.
- Do **not** authorize HHS payments to a responsible relative or legal dependent of the client.
- The extent to which others in the home are able and available to provide the needed services. Authorize HHS **only** for the benefit of the client and **not** for others in the home. If others are living in the home, prorate the IADL's by at least 1/2, more if appropriate.
- The availability of services currently provided free of charge. A written statement by the provider that he is no longer able to furnish the service at no cost is sufficient for payment to be authorized as long as the provider is not a responsible relative of the client.

- HHS may be authorized when the client is receiving other home care services if the services are not duplicative (same service for same time period).

Adult Services Manual (ASM) 363, 9-1-2008, Pages 2-5 of 24.

The Appellant's case was sent to central office review on ██████████. After additional information was requested and received, the RN who reviewed the Appellant's case made several adjustments to the HHS hours requested in the workers time and task, resulting in an overall reduction in HHS hours for the Appellant's case. During the hearing, the Department stated that the times the RN listed in her ██████████ correspondence to the worker were recommendations and if the worker disagreed with these times, he could have submitted additional information to central office for further review. However, the correspondence sent to the worker by the RN does not actually state more information could be submitted for further review. The correspondence directs the worker to "review the information and revise the time and task as appropriate for the services being provided" then fax to the specified number. (Exhibit 1, page 25) This does not imply that the worker could have submitted any additional information for further review.

The Appellant disagrees with the changes to the requested time and task authorization for his Home Help Services case. In the following analysis, some tasks and activities were grouped for evaluation as the adjustments made by the Department included moving time for one task a different task category.

Eating and Eating and Feeding Assistance

The RN testified that she determined the task of eating and feeding assistance should be eliminated and all hours for this activity should be included under the task of eating. The RN testified eating and feeding assistance was not appropriate as this task is typically used to cover more complex assistance such as tube feeding.

The worker requested 28 hours and 6 minutes for eating as well as 19 hours and 34 minutes for eating and feeding assistance monthly. (Exhibit 1, page 44) However, 135 minutes per day were requested in the initial letter and 120 minutes per day were requested in the EHH Addendum. (Exhibit 1, pages 28 and 36) The RN combined the tasks and only approved 30 hours and 6 minutes per month, or 1 hour per day under eating. (Exhibit 1, page 16) The RN also testified that the time the provider is waiting for chewing/swallowing is not covered. (see also Exhibit 1, page 24)

The Appellant's representative testified that feeding the Appellant has become more difficult over the past 10 years. She explained that there are fewer types of foods he can eat now and that sometimes food has to be taken back out of the Appellant's mouth if he is having a hard time with it.

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The combining of the hours for all eating activities to be authorized under only one task, eating, is sustained. However, the overall reduction of HHS hours for eating, based on chewing and swallowing time not being covered, can not be sustained under Department policy. Functional Assessment Definition for eating specifically includes chewing and swallowing foods and liquids. (Adult Services Manual (ASM) 365, 10-1-1999, page 1 of 2, see Exhibit 1 page 52) The HHS hours for eating shall be increased to 120 minutes per day, as requested in the EHH Addendum.

Toileting and Bowel Program

The RN increased the HHS hours for toileting but decreased the HHS hours for the bowel program. The HHS hours for toileting were increased by the RN to 40 minutes per day, or 20 hours and 4 minutes per month. (Exhibit 1, pages 16 and 24) The recommended time and task submitted by the worker was only for 28 minutes per day, totaling 17 hours and 3 minutes per month. (Exhibit 1, page 44)

The RN testified that the reduction in HHS hours for the bowel program was based upon paying for only hands on care for this task and not time spent sitting on the toilet waiting. The RN also noted that administration of medications, such as laxatives and suppositories, are actually covered under the HHS hours allowed for medication. The HHS hours were reduced from 37 hours and 37 minutes per month, or 1 hour and 15 minutes per day, to 7 hours and 31 minutes per month, or 15 minutes per day. (Exhibit 1, pages 16 and 44)

The Appellant testified a trip to the bathroom takes close to 30 minutes and includes assistance with getting to the bedroom, transferring to and from his chair, the bed, and the toilet, dressing and undressing, and using the toilet. While this ALJ understands that all these steps are necessary, the time it takes to get to and from the bedroom would be covered under mobility and the multiple moves between the chair, the bed and the toilet would be covered under transferring.

It is noted that the information sent to the RN for review was not consistent. The initial information submitted to the RN for review requested noted urination requiring 7 minutes 8 times per day, or 28 hours per month. (Exhibit 1, page 36) However the proposed time and task only requested 28 minutes per day or 14 hours and 3 minutes per month. The initial request also stated the Appellant has a BM once per day requiring 30 minutes including undress, transfer, stimulate, clean, redress and re-transfer. (Exhibit 1, page 36) However the proposed time and task requested 1 hour and 15 minutes per day for the bowel program, or 37 hours and 37 minutes per month. (Exhibit 1, page 44) Further the additional information submitted to the RN for review in the EHH Addendum notes that the Appellant has a BM once per day with staff assistance for stimulation and cleaning requiring 10 minutes per day. The EHH Addendum also noted that urination takes 8 minutes per episode, 10 times per day. (Exhibit 1, page 28)

Based on the submitted evidence and testimony, the adjustments to toileting and bowel program HHS hours are sustained. The HHS hours authorized for toileting allowed for 40 minutes per day for this task, or about 5 minutes for 8 times per day, noting that

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transferring and mobility time covers getting to the bathroom and the transfers between the chair, bed, and toilet. The reduction to the bowel program is also sustained as this allows for 15 minutes of hands on care per day for the bowel program, more than the need stated in the EHH Addendum. The submitted evidence did not at any time support the initial time and task request of 37 hours and 37 minutes for the bowel program.

Transferring

It is noted that the HHS hours authorized for transferring were increased from the initial request of 5 hours and 1 minute to 15 hours and 3 minutes per month. (Exhibit 1, pages 16 and 44) This is consistent with the Department's determinations that transferring time was not included in the HHS hours allowed for other activities such as toileting, and instead included in the task of transferring itself. This is also consistent with the revised time for transferring requesting in the EHH Addendum. (Exhibit 1, page 29) The adjusted HHS hours for transferring are sustained.

Mobility

The RN testified that she needed additional information to fully assess the time allowed for this task. However, she still allowed up to 7 hours per month for mobility. (Exhibit 1, page 24) The initial time and task proposal submitted by the worker requested 9 hours and 2 minutes per day for mobility; however no discussion of mobility was included in the [REDACTED] letter requesting the exception. (Exhibit 1, pages 36 and 52) The worker did provide some explanation of the Appellant's mobility needs and requested additional time in the EHH Addendum; however, the worker described assistance with mobility outside of the home. (Exhibit 1, page 29)

The Functional Assessment Definition for mobility specifically this task covers walking or moving within the living area such as room to room or changing locations within a room and specifically excludes transfers or needs once a destination is reached. (Adult Services Manual (ASM) 365, 10-1-1999, page 1 of 2, see Exhibit 1 page 52) This is consistent with the Department's attempts to break down tasks and authorize the HHS hours for multistep processes to complete an activity under each appropriate task. Under the definition for mobility, it was also appropriate for the RN to not consider mobility needs outside the home.

The testimony from the Appellant, his representative, and the worker does support a need for mobility assistance within the home. Specifically, the testimony showed that the provider frequently repositions the Appellants arm in the wheel chair to allow him to utilize the ball handled control to operate the chair, and that assistance is also needed with some turns and doorways within the home. The adjusted HHS hours authorized for mobility are sustained.

Medication and Suctioning

The worker requested medication time that would also include daily breathing and percussion treatments as well as ventilator cleaning. (Exhibit 1 page 37) Again, the

time requested in the narrative description, 24 hours per month, differs from the time indicated on the proposed time and task 20 hours and 4 minutes per month. (Exhibit 1, pages 37 and 44)

The RN testified that the documentation submitted only shows three medications for the Appellant. (see Exhibit 1, page 42) The RN explained that the time she allowed for medication was reasonable, even with including administering medications for the bowel program and the breathing treatments. The RN also stated that ventilator care would be covered under the suctioning time and the time allowed for breathing treatments would only include hands on activities like setting up the machine, and not waiting for the medication to be administered. The RN's ██████████, note also explains that the percussion treatments performed before suctioning are included in the suctioning time as the suctioning itself only requires 30-45 seconds. (Exhibit 1, page 25)

The Appellant and his representative testified that the provider must frequently tap the dispenser for the breathing treatments to make the medication is fully dispensed. This was noted in the EHH Addendum submitted to the RN as occurring every 40 to 60 seconds. (Exhibit 1, page 28) The Appellant's testimony also indicated that the percussion treatments are performed just prior to suctioning when he gets up in the morning and when he gets ready for bed.

The reduction in HHS hours for medications to 15 minutes per day or 7 hours and 31 minutes per month is not sustained. Despite only taking a few medications, 15 minutes per day is not adequate to cover the twice daily breathing treatments requiring the provider to flick the dispenser every 40-60 seconds over the 10 minute period it takes to dispense the medication each treatment. The HHS hours for medication should be increased to 25 minutes per day to cover the Appellant's medications, as well as setting up and administering the breathing treatments.

The reduction in HHS hours for suctioning is also not sustained. The RN's ██████████, note indicates the 40-45 minutes per day she allowed only included 15 minutes for trach care, 15 minutes for suctioning, and 10 minutes for vent related care. (Exhibit 1, page 24) The 15 minutes for suctioning itself is not sufficient time to include the percussion treatments that take 10 minutes each, twice per day as well as the other suctioning over the course of the day. (Exhibit 1, page 28) The HHS hours for suctioning shall be increased to 1 hour and 5 minutes per day.

Specialized Skin Care and Grooming

The worker requested HHS hours for specialized skin care time that would include applying lotion and repositioning to prevent decubitus ulcers. (Exhibit 1 page 36) Again, the time requested in the narrative description, 20 total hours per month, differs from the time indicated on the proposed time and task of 34 hours and 7 minutes per month. (Exhibit 1, pages 36 and 44) The EHH Addendum only requested the 15 hours per month indicated for repositioning.

The RN's [REDACTED], note indicates that specialized skin care only covers the repositioning as the application of lotion would be considered part of grooming. It is noted that the HHS hours for grooming were increased from 6 hours and 1 minute per month to 11 hours and 2 minutes per month. (Exhibit 1, page 16)

The RN allowed up to 25 minutes per month to cover the repositioning for specialized skin care, stating this would cover repositioning every 2-3 hours taking 3-4 minutes each time. (Exhibit 1, page 25) However, the information submitted to the RN indicated that for the Appellant repositioning is needed every 20 minutes and lasts only 20 seconds but the total monthly time for this was listed as 10 hours in one sentence, but then 15 hours in the next sentence. (Exhibit 1, pages 28 and 36)

The adjusted time for specialized skin care is sustained. The RN's calculation of the authorized HHS hours does not appear to be based on the information provided to her about the Appellant's repositioning needs as it is so different from the frequency and duration described in the information submitted. However, calculating for repositioning every 20 minutes lasting 20 seconds each time, does result in approximately 12 hours and 32 minutes per month for this activity, the time allowed by the RN.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly adjusted the HHS hours in the areas of toileting, bowel program, transferring, mobility, specialized skin care and grooming but not in the areas of eating, medication, and suctioning.

IT IS THEREFORE ORDERED THAT:

The Department's decision is PARTIALLY AFFIRMED and PARTIALLY REVERSED. The HHS hours authorized shall be adjusted to 120 minutes per day for eating, 25 minutes per day for medication and 1 hour and 5 minutes per day for suctioning.

Colleen Lack
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:

[REDACTED]

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Date Mailed: 3/29/2010

***** NOTICE *****

The State Office of Administrative Hearings and Rules March order a rehearing on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. The State Office of Administrative Hearings and Rules will not order a rehearing on the Department's motion where the final decision or rehearing cannot be implemented within 90 days of the filing of the original request. The Appellant March appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt of the rehearing decision.