

**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. 2010-22344 HHS

██████████

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 on his own behalf. ██████████, caregiver, appeared as a witnesses 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 C-5 quadriplegia, left ischial pressure ulcers, COPD, and asthma. (Exhibit 1, pages 27-29, 32 and 48)
3. No changes have been made to the Appellant's Home Help Services payment since ██████████. (Exhibit 1, page 25)
4. The Appellant is ranked as a level 5 for most activities of daily living and instrumental activities of daily living. The exceptions are eating (level 3) respiration (level 1), mobility (level 3) and shopping (Level 4). (Exhibit 1,

page 44)

5. 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 41)
6. On ██████████, the worker requested approval for the Appellant's case from the Department of Community Health (DCH) central office as there was no paperwork to verify that the increases in the Appellant's Expanded Home Help Services case had been approved since ██████████ (Exhibit 1, pages 25-26)
7. The worker submitted a request for approval of a monthly payment of ██████████ 198 hours and 9 minutes of care. (Exhibit 1, pages 25-35)
8. On ██████████, the Registered Nurse (RN) who reviewed the Appellant's case requested additional information from the worker. (Exhibit 1, pages 19-23)
9. The RN had additional phone conversations with the worker regarding how to assess times and tasks and on ██████████, the RN sent a fax with the working definitions for the tasks to the worker. (Testimony and Exhibit 1, page 18)
10. After review of the additional information, the RN made revisions to the time and task schedule resulting decreased a monthly payment of ██████████ or 146 hours and 2 minutes of care. (Exhibit 1, pages 9 and 15)
11. On ██████████, the Department sent an Advance Negative Action Notice notifying the Appellant that his Home Help Services payments would be reduced to ██████████ per month, effective ██████████ (Exhibit 1, page 13)
12. On ██████████ the State Office of Administrative Hearings and Rules received the Appellant's Request for Hearing. (Exhibit 1, pages 4-14)

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

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- 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 the central office for review on ██████████. (Exhibit 1, pages 24-35) The RN noted that no complex care tasks were included, despite the Appellant's doctors indications on the DHS 54A Medical Needs forms that there was a need for these services. (Exhibit 1, pages 27-29) The RN testified that she had phone conversations with the ASW requesting additional information and explaining how to assess times and tasks. Based on the information submitted for review, the RN made several adjustments to the Appellant's case. The task of toileting was eliminated and replaced with the complex care tasks of catheter care and bowel program. Additional complex care tasks of specialized skin care, range of motion exercises and wound care were added to the Appellant's chore grant. The HHS hours for bathing, grooming, dressing, and eating were approved as requested. The HHS hours for laundry were increased and the HHS hours for transferring, mobility, housework, shopping, and meal preparation were decreased. The overall result of the adjustments made by the RN was a significant reduction in the monthly HHS payment. (Exhibit 1, pages 9 and 35)

The Appellant disagrees with the reductions. In the hearing request the Appellant notes that he had been receiving 6 ½ hours per day in home help services. (Exhibit 1, page 7) The Appellant also submitted a letter from a doctor indicating that attendant care was needed in excess of 6 hours per day. (Exhibit 1, page 11) However, Department policy states that the medical professional certifies that the client's need for service is related to an existing medical condition, but does not prescribe or authorize personal care services. *Adult Services Manual (ASM) 363, 9-1-2008, Page 9 of 24.* Further, HHS hours are authorized based upon rankings and time needed per task as determined in the comprehensive assessment, not by total number of hours per day. Therefore, the reductions made to the Appellant's case must be reviewed by examining the reductions made to each task.

Toileting/Catheter Care and Bowel Program

The HHS hours for toileting, 60 hours and 12 minutes per month (2 hours per day) were removed and instead the RN authorized 15 hours and 3 minutes per month (30 minutes per day) for catheter care and 8 hours and 36 minutes per month (30 minutes 4 days per week) for a bowel program. (Exhibit 1, pages 9 and 35) The RN testified that the requested hours (60 hours and 12 minutes per month) greatly exceeded the

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Department's reasonable time schedule of 14 hours per month for a person ranked at a level 5 for toileting. (Exhibit 1, page 21) The RN also noted that catheter care and bowel program were marked by the Appellant's physicians on the DHS 54A Medical Needs forms. (Exhibit 1, pages 27-29)

While this is a significant reduction to the overall HHS hours allowed for continence per month, the reduced times are consistent with the Actual Times submitted by the Appellant of 20-30 minutes per day to dump the catheter leg bag, 45 minutes once per week to change catheter and 35 minutes every other day for suppositories. (Exhibit 1, page 10) The replacement of toileting hours with the reduced total hours for catheter care and bowel program is sustained.

Transferring/Specialized Skin Care

The HHS hours for transferring were reduced from 39 hours and 38 minutes per month (1 hour and 19 minutes per day) to 10 hours and 2 minutes per month (20 minutes per day) and specialized skin care was added for 10 hours and 2 minutes per month (20 minutes per day). (Exhibit 1, pages 9 and 35) The RN testified the requested hours for this activity (39 hours and 38 minutes per month) also greatly exceeded the reasonable time schedule allowance of 7 hours per month for an individual ranked as a level 5. (Exhibit 1, page 21) The RN stated that reduced HHS hours for transferring still exceed the reasonable time schedule and that she added a new task category, specialized skin care, to give additional time for repositioning to prevent skin breakdown based. Specialized Skin care was one of the complex care tasks the Appellant's doctors indicated there was a need for on the DHS 54A Medical Needs forms. (Exhibit 1, pages 27-29)

The Appellant did not include any time for traditional transferring in his submitted Actual Times. (Exhibit 1, page 10) Based on the hearing request, it appears he does not get out of bed most days. (Exhibit 1, page 7) The hearing request and submitted Actual Times indicate the Appellant must be repositioned every two hours and that it takes 10 minutes each time. (Exhibit 1, pages 7 and 10) The Appellant's caregiver explained it takes this long because bridges must be used when the Appellant is positioned on his side. This process is described in the Appellant's hearing request. (Exhibit 1, page 7)

This ALJ agrees with the Department that 10 minutes for each repositioning effort is excessive, even considering that bridges are utilized. The combination of transferring and specialized skin care HHS hours authorized by the RN still allows 40 minutes per day for repositioning. The reduction to HHS hours for transferring and addition of HHS hours for specialized skin care is sustained.

Mobility

The HHS hours for mobility were reduced from 22 hours and 4 minutes per month (44 minutes per day) to 10 hours and 2 minutes per month (20 minutes per day). (Exhibit 1, pages 9 and 35) The justification for the requested hours states that the Appellant needed some assistance inside the home and total assistance outside home. (Exhibit 1,

page 34) The RN explained that the Home Help program only compensates for mobility assistance within the home. (See also Exhibit 1, page 54) Accordingly, the RN reduced the HHS hours for this task to 20 minutes per day or about 10 hours per month, which is a bit above the reasonable time schedule allowance of 9 hours per month for an individual ranked at a level 5. (Exhibit 1, page 21)

While this is a significant reduction to the overall HHS hours allowed for mobility per month, the times are consistent with the Appellant's submitted "actual times" listing of 20 minutes per day for moving around the house when up. (Exhibit 1, page 10) The reduction in HHS hours for mobility is sustained.

Housework, Shopping, Laundry, and Meal Preparation

The HHS hours for housework were reduced from 6 hours and 1 minute per month to 3 hours and 1 minute per month. The HHS hours for laundry were increased from 3 hours and 1 minute per month to 6 hours and 1 minute per month. The HHS hours for shopping were decreased from 5 hours and 1 minute per month to 2 hours and 30 minutes per month. The HHS hours for meal preparation were decreased from 14 hours and 3 minutes per month to 12 hours and 32 minutes per month. (Exhibit 1, pages 9 and 35) The RN testified that the reductions in HHS hours for housework, shopping, and meal preparation were due to the Department's policy requiring proration of the HHS hours for these tasks when there is a shared household.

The policy implemented by the Department recognizes that in most cases, certain tasks are performed that benefit all members who reside in the home together, such as cleaning, laundry, shopping and meal preparation. Normally, it is appropriate to pro-rate the payment for those tasks by the number of adults residing in the home together, as the Appellant's care giver would have to clean her own home, make meals, shop and do laundry for herself if she did not reside with the Appellant. The HHS program will not compensate for tasks that benefit other members of a shared household. Accordingly, the authorized hours for these activities must be prorated under Department policy. However, the RN testified she did not apply proration to laundry, instead she increased the HHS hours to 6 hours per month for laundry. This is consistent with the provided justification that the Appellant's bedding must be changed frequently to prevent pressure sores. (Exhibit 1, page 34)

It is not contested that two persons live in the household, the Appellant and his caregiver. Department policy imposes maximums on the HHS hours allowed for these tasks: 5 hours per month for shopping, 6 hours per month for housework, 7 hours per month for laundry, and 25 hours per month for meal preparation. The times the Appellant indicated it takes for his caregiver to complete these tasks in the hearing request and on the Actual Times document exceed these maximums, even before proration for a shared household. (Exhibit 1, pages 7 and 10) After proration for a household of 2 persons, the Department authorized half of the maximums allowed for housework, shopping, and meal preparation. The reductions in the areas of housework, shopping, and meal preparation are sustained as they are reflective of the Appellant's rankings and household composition.

Advance Notice

It appears that the Department intends to make the reductions to the Appellant's case effective the ██████████, the same date they issued the Advance Negative Action Notice. (Exhibit 1, pages 36-39) The Code of Federal Regulations, Chapter 42 addresses the Appellant's rights with respect to Advance Negative Notice of an agency action:

§ 431.211 Advance notice.

The State or local agency must mail a notice at least 10 days before the date of action, except as permitted under §§ 431.213 and 431.214 of this subpart.

§ 431.213 Exceptions from advance notice.

The agency may mail a notice not later than the date of action if—

- (a) The agency has factual information confirming the death of a recipient;
- (b) The agency receives a clear written statement signed by a recipient that—
 - (1) He no longer wishes services; or
 - (2) Gives information that requires termination or reduction of services and indicates that he understands that this must be the result of supplying that information;
- (c) The recipient has been admitted to an institution where he is ineligible under the plan for further services;
- (d) The recipient's whereabouts are unknown and the post office returns agency mail directed to him indicating no forwarding address (See § 431.231 (d) of this subpart for procedure if the recipient's whereabouts become known);
- (e) The agency establishes the fact that the recipient has been accepted for Medicaid services by another local jurisdiction, State, territory, or commonwealth;
- (f) A change in the level of medical care is prescribed by the recipient's physician;
- (g) The notice involves an adverse determination made with regard to the preadmission screening requirements of section 1919(e)(7) of the Act; or
- (h) The date of action will occur in less than 10 days, in accordance with § 483.12(a)(5)(ii), which provides exceptions to the 30 days notice requirements of § 483.12(a)(5)(i)

§ 431.214 Notice in cases of probable fraud.

The agency may shorten the period of advance notice to 5 days before the date of action if—

- (a) The agency has facts indicating that action should be taken because of probable fraud by the recipient; and
- (b) The facts have been verified, if possible, through secondary sources.

The [REDACTED], Advance Negative Action Notice issued by the Department clearly failed to provide the Appellant with the required advance notice of at least 10 days that his HHS payments would be reduced as the effective date of the reduction was also [REDACTED]. (Exhibit 1, page 13) None of the exceptions to the advance notice requirement were present in this case. Therefore, the Department must not make the reductions to the Appellant's Home Help Services case effective any earlier than 10 days from the date of the Advance Negative Action Notice.

Overall, this ALJ is concerned that the information submitted to the RN for review was not complete. For example, no recent information was submitted to the RN describing the type of care the Appellant needs for wound care of the ischial ulcers or for the range of motion exercises. While the reductions were sustained based on requested hours and available information for this assessment, it would be appropriate to obtain additional information and documentation at the next comprehensive assessment to ensure that the authorized HHS hours are appropriate for each task.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly reduced Home Help Services payments to the Appellant. However, the reductions can not be made effective the same date as the Advance Negative Action Notice.

IT IS THEREFORE ORDERED THAT:

The Department's decision is **PARTIALLY AFFIRMED** and **PARTIALLY REVERSED**. The reductions are sustained but can not be made effective earlier than 10 days from [REDACTED], the date of the Advance Negative Action Notice.

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

cc:

[REDACTED]

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Date Mailed: 5/20/2010

***** 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.