STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH
P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 334-9505

IN THE MATTER OF:

Appellant
________________________/

Docket No. 2010-25081 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 her own behalf. , chore provider, appeared as a witness for the Appellant. Appeals Review Officer, represented the Department (DHS). , Adult Services Worker, , Adult Services Supervisor, appeared as witnesses for the Department.

ISSUE

Did the Department properly authorize 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 woman who has been diagnosed with schizoaffective disorder-paranoid, hypertension, carpal tunnel, diabetes mellitus, degenerative joint disease in left foot and ankle, fibromyalgia, spondylosis, supraventricular tachycardia, and tendonitis. (Exhibit 2, page 7 and Exhibit 3)

3. On , a DHS Adult Services Worker attempted to complete a home visit for the periodic reassessment of the Appellant's Home Help Services (HHS) case. The Appellant was not home and a message was left with the chore provider to have the Appellant call the worker if she is still interested in the program. (Exhibit 2, page 4)

4. The worker and Appellant had additional contacts and had to reschedule the home visit a second time due to the Appellant's hospitalization. (Exhibit 2, page 3)

5. On , the worker was able to complete the home visit and the Appellant requested additional HHS hours. (Testimony and Exhibit 2, page 4)

6. On the Appellant's physician completed a DHS-54A Medical Needs form. (Exhibit 3)

7. On , the Appellant and chore provider went to the Department office to discuss the retroactive pay increase. (Exhibit 2, page 1)

8. As a result of the information gathered for the assessment, the worker authorized HHS payments in the amount of per month effective . Notice of this approval was sent to the Appellant on (Exhibit 2, pages 2-3)

9. On the State Office of Administrative Hearings and Rules received the Appellant's Request for Hearing. (Exhibit 1, pages 1-3)

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.

  Note: Unavailable means absence from the home, for employment or other legitimate reasons. **Unable** means the responsible person has disabilities of his/her own which prevent caregiving. These disabilities must be documented/verified by a medical professional on the DHS-54A.
- 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) 9-1-2008, Pages 2-5 of 24

The Appellant's HHS case was originally scheduled for a home visit to complete the periodic re-assessment on . The Appellant was not back from her doctors appointment when the worker arrived. A second home visit was scheduled in but the Appellant was in the hospital. The worker was able to complete the home visit on . (Exhibit 2, pages 3-4) The worker testified that the Appellant requested additional HHS hours. A DHS 54-A Medical Needs form was submitted from the Appellant's doctor with a signature date of The doctor did certify a need for personal care services, but did not circle any specific tasks. The doctor indicated that the Appellant is able to work and noted that she can not stand for prolonged periods. (Exhibit 3)

On the Appellant and chore provider went to the local office to discuss the retroactive pay increase. (Exhibit 1, page 2) The worker testified that upon review of the information gathered for the assessment, she did not find justification to increase the Appellant's chore grant. On , the worker issued a Services and Payment Approval notice to the Appellant that services were approved starting per month and noted that payments were issued. (Exhibit 2, page 2) On , the worker also entered the retroactive payment authorization into the Department's computer system going back to (Exhibit 12, page 8) The worker explained the payments are up to date except for the month of , when the Appellant was hospitalized.

The Appellant agreed that the issue of retroactive payments was resolved. However, the Appellant disagrees with the pay rate and the workers determination that the HHS hours should remain the same. The Appellant chore provider explained that the Appellant needs more hours authorized noting that he does not get paid for the extra things he does. The Appellant disagrees with her doctors indications that she can work and that her ankle/foot impairment will only require treatment for 12 months. The Appellant explained that she still needs another surgery for her foot.

Based upon the available evidence, the Department properly assessed and authorized HHS payments to the Appellant. The Appellant testified that the issue of retroactive payments has been resolved. The pay rate for chore providers is set by Department policy and neither the worker nor this ALJ has the authority to increase the pay rate for the Appellant's chore provider. The Department received and reviewed the information from the Appellant's doctor, which does not support in increase in HHS hours at this time. The Appellant may continue to submit updated Medical documentation to the Department for review of her ongoing services.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly authorized HHS payments to the Appellant based on the available information.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

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

cc:

Date Mailed: 5/28/2010

*** **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.