

**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. 2010-25670 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. ██████████. ██████████ Adult Services Worker, appeared as a witness 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 ██████████ who has been diagnosed with a multiple sclerosis and degenerative disc disease. (Exhibit 1, page 10)
3. 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 9)
4. As a result of the information gathered for the assessment, the worker decreased the HHS hours authorized for bathing, grooming, dressing, toileting, transferring, mobility, and medications. The worker also removed the HHS hours authorized eating, specialized skin care, catheters or leg bags, and range of motion exercises. (Exhibit 1, pages 5-6).

5. On ██████████, the Department sent an Advance Negative Action Notice to the Appellant indicating that her Home Help Services payments would be reduced to ██████████ per month, effective ██████████. (Exhibit 1, pages 7-8)
6. On ██████████, the State Office of Administrative Hearings and Rules received the Appellant's Request for Hearing. (Exhibit 1, pages 3-4)

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.

Program requirements are set forth in Adult Services Manual item 362, below:

COMPREHENSIVE ASSESSMENT

If the client appears eligible for independent living services, conduct a face-to face interview with the client in their home to assess the personal care needs. Complete the comprehensive assessment (DHS- 324) which is generated from the Adult Services Comprehensive Assessment Program (ASCAP).

SERVICE PLAN

Develop a service plan with the client and/or the client's representative. Determine the method of service delivery and any use of home help services with other types of services to meet the assessed needs of the client. The ILS service plan is developed whenever an issue is identified in the comprehensive assessment.

CONTACTS

The worker must, at a minimum, have a face to face interview with the client **and** care provider, prior to case opening, then every six months, in the client's home, at review and redetermination.

Adult Services Manual item 363 addresses program procedures:

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

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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

On ██████████ the Adult Services Worker (worker) completed an HHS comprehensive assessment in accordance with Department policy. The worker testified that using the functional scale, based on her observations and the information she was provided at the time of the assessment, she adjusted the Appellant's rankings and decreased HHS hours for several activities. The worker also removed several tasks from the Appellant's chore grant completely. This resulted in a significant reduction to the Appellant's HHS payment. (Exhibit 1, pages 5-6)

The Appellant disagrees with the reduction to her HHS payment. In the hearing request, the Appellant notes that she had been receiving 5 ½ to 6 hours per day in home help services for approximately the last seven years. (Exhibit 1, page 3) The Appellant submitted the provider logs from ██████████, and part of ██████████, a handwritten logs of the providers daily activities, a statement from a past chore provider and past payment check stubs. (Exhibits 2, 3, 6 and 7) The Appellant also provided letters from her doctors indicating how many hours of assistance are needed. (Exhibits 4 and 5) 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 not authorized by a total number of hours needed per day, week or month. Instead, HHS hours are based upon the rankings and times needed for each activity, as determined from the comprehensive assessment. Therefore, the reductions made to the Appellants case must be reviewed by examining the changes made to each task, based on the information available at the time of the comprehensive assessment.

Bathing

The HHS hours for bathing were reduced from 22 minutes 7 days per week to 16 minute 4 days per week. (Exhibit 1, pages 5-6) The worker stated that she decreased the Appellant's ranking from a level 5 to a level 3 and reduced the days per week for this activity based upon the Appellant's statements. The worker explained that the Appellant reported she bathes every other day, the provider washes her hair and assists with the transfer but the Appellant does everything else herself. (Exhibit 1, page 11)

The Appellant testified that she now needs daily baths, which is also documented in the letter submitted from ██████████. However, this letter is dated ██████████. (Exhibit 4) Accordingly, it was not available to the Department at the time of the ██████████ assessment. The Department did not have the opportunity to consider this recent

change in the Appellant's care needs at the time the reduction was made. However, the Department should consider the new evidence presented at this hearing in determining the Appellant's ongoing HHS benefits.

The reduced ranking was appropriate as the Appellant is not totally dependant on others for this activity and only requires assistance with some parts of bathing. The reduction to the Appellant's HHS hours for bathing is sustained based upon on the information available at the time of the Assessment.

Grooming

The HHS hours for grooming were reduced from 12 minutes per day 7 days per week to 8 minutes per day, 7 days per week. (Exhibit 1, pages 5-6) The worker stated that she decreased the Appellant's ranking from a level 5 to a level 3 for this activity based upon the Appellant's statements. The worker explained that the Appellant reported she can brush her own teeth but needs assistance with her hair four times per week. (Exhibit 1, page 11)

The Appellant did not provide any testimony specific to grooming; however she did explain that sometimes she needs more help than other times. The reduced ranking was appropriate considering the Appellant's description of the assistance she needs. The reduced HHS hours allow for some daily assistance with grooming in addition to the 4 times per week hair assistance is provided. The reduction to the Appellant's HHS hours for grooming is sustained.

Dressing

The HHS hours for dressing were reduced from 18 minutes per day 7 days per week to 16 minutes per day, 7 days per week. (Exhibit 1, pages 5-6) The worker stated that she decreased the Appellant's ranking from a level 5 to a level 4 for this activity. The worker explained she that she determined the ranking at level 4 was appropriate based upon her observation of the Appellant reaching. The worker found it reasonable that the Appellant is unable to dress without assistance, but stated she believes the Appellant can do some parts of this activity. (Exhibit 1, page 11)

The Appellant did not provide any testimony specific to dressing; however she did explain that sometimes she needs more help than other times. The ranking at level 4 is appropriate as this indicates the Appellant requires much physical assistance with this task. Under Department Policy, a ranking at level 5 would be appropriate only if the Appellant was totally dependant on others for dressing, meaning she does not perform the activity even with human assistance. Adult Services Manual (ASM) Section 363, 9-1-2008, page 3 of 24 and Adult Services Manual (ASM) Section 365, 10/1/1999, page 1 of 2. (Exhibit 1, pages 13 and 17) The reduction to the Appellant's HHS hours for dressing is sustained.

Toileting

The HHS hours for toileting were reduced from 28 minutes per day 7 days per week to 22 minutes per day, 7 days per week. (Exhibit 1, pages 5-6) The worker stated that she decreased the Appellant's ranking from a level 5 to a level 3 for this activity based upon the Appellant's statements. The worker explained that the Appellant reported she has occasional incontinence, needs help with the transfer, but can perform her own personal hygiene. (Exhibit 1, page 11)

The Appellant did not provide any testimony specific to toileting; however she did explain that sometimes she needs more help than other times. The reduced ranking was appropriate based on the Appellant's description of the assistance she needs with this activity. The reduction to the Appellant's HHS hours for toileting is sustained.

Mobility

The HHS hours for mobility were reduced from 18 minutes per day 7 days per week to 16 minutes per day, 7 days per week. (Exhibit 1, pages 5-6) The worker explained that she decreased the Appellant's ranking from a level 5 to a level 4 for this activity based upon her observations and the Appellant's statements. The worker explained that she observed the Appellant move through the home in the electric chair without assistance from the provider. The worker stated the Appellant reported the provider mainly comes to assist her with getting out of bed. However, this would be assistance with transferring, not mobility as these tasks are described in the Department policy. (Adult Services Manual (ASM) Section 365, 10/1/1999, page 1 of 2. (Exhibit 1, page 17)

The Appellant did not provide any testimony specific to mobility; however she did explain that sometimes she needs more help than other times. The reduced ranking was appropriate based upon the workers observation that the Appellant is able to move about her home in her wheelchair. The reduction to the Appellant's HHS hours for mobility is sustained.

Transferring

The HHS hours for transferring were reduced from 24 minutes per day 7 days per week to 6 minutes per day, 7 days per week. (Exhibit 1, pages 5-6) The worker explained that she decreased the Appellant's ranking from a level 5 to a level 3 for this activity based upon her observation of the Appellant during the home visit. The worker testified that she observed the Appellant transfer on her own from the sofa to the electric chair.

The Appellant testified she can sometimes get out of the wheelchair herself, and that the home visit occurred during her best time period of the day. The Appellant explained that sometimes she needs more help. The reduced ranking was appropriate as the Appellant is not totally dependant on others for this activity, can sometimes transfer independently, but needs some assistance with this task some of the time. The reduction to the Appellant's HHS hours for transferring is sustained.

Medication

The HHS hours for medication were reduced from 6 minutes per day 7 days per week to 3 minutes per day, 7 days per week. (Exhibit 1, pages 5-6) The worker stated that she decreased the Appellant's ranking from a level 5 to a level 3 for this activity based upon the Appellant's statements. The worker explained that the Appellant reported her provider sets up the medications and administers one shot, but the Appellant can take her oral medications herself once they are set up. (Exhibit 1, page 11)

The Appellant testified that she also has topical medications that she needs assistance to apply. The Appellant stated she only uses topical medication every four to six weeks. However, the worker testified that the topical medication was not reported at the assessment. The reduced ranking was appropriate based on the Appellant's description of the assistance she needs with this activity at the home visit. The reduction to the Appellant's HHS hours for medication is sustained.

Eliminated Tasks

The worker also removed the tasks of eating, specialized skin care, catheters or leg bags, and range of motion exercises from the Appellant's chore grant. (Exhibit 1, pages 5-6) The worker explained that eating was removed based upon the Appellant's statements that she can feed her self. The worker also stated no need for specialized skin care was indicated during the home visit or on the Medical Needs form completed by the Appellant's doctor. The worker testified that the Appellant reported she had not had a catheter in quite a few years and was not currently doing any range of motion exercises.

The Appellant did not dispute that she can eat independently. The Appellant testified that she does not use a catheter or leg bag, nor does she have a current range of motion exercise program. The removal of eating, specialized skin care, catheters or leg bags, and range of motion exercises is sustained. When the Appellant goes back on topical medication, she should report this to her worker, who may request documentation for her doctor, to determine if HHS hours for specialized skin care, wound care or additional medication time would be appropriate.

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.

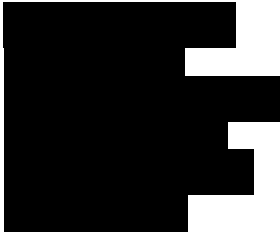

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IT IS THEREFORE ORDERED THAT:

The Department's decision is **AFFIRMED**

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

cc:



Date Mailed: 6/7/2010

***** NOTICE *****

The State Office of Administrative Hearings and Rules may 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 may 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.