

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

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IN THE MATTER OF:

Docket No. 2010-31989 HHS

Case No. [REDACTED]

[REDACTED],

Appellant

_____ /

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 [REDACTED]. [REDACTED], attorney, appeared on behalf of the Appellant. His witness was [REDACTED], mother and guardian. [REDACTED], appeals review officer, represented the Department. Her witnesses were [REDACTED], Adult Services Worker (ASW) and [REDACTED], ASW supervisor.

ISSUE

Did the Department conduct a comprehensive assessment of 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 disabled [REDACTED]-year-old Medicaid beneficiary who is receiving Adult Home Help Services.
2. The Appellant has been diagnosed with Canavan disease and seizure disorder.
3. The Appellant's mother is his provider.
4. The provider works outside of the home up to 50 hours a week. See Testimony.
5. On [REDACTED], the Appellant was enrolled in MI Choice, the Home and Community-Based Waiver for the Elderly and Disabled.

6. The Appellant's HHS benefit was unilaterally terminated by the Department on [REDACTED], without a comprehensive, in home assessment.
7. On appeal, ALJ Colleen Lack ordered reinstatement of benefits and further ordered the Department to conduct the required comprehensive assessment – which took place on [REDACTED]. Department's Exhibit A, pp. 2, 12.
8. On [REDACTED], the Appellant was advised of his reduced benefits – effective [REDACTED]. Department's Exhibit A, pp. 2, 4.
9. A faxed request for a formal, administrative hearing was received by the State Office of Administrative Hearings and Rules for the Michigan Department of Community Health on [REDACTED].

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 Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

Home Help Services 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.

COMPREHENSIVE ASSESSMENT

The Adult Services Comprehensive Assessment (DHS-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 customer in his/her place of residence.
- An interview must be conducted with the caregiver, if applicable.
- Observe a copy of the customer'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 re-determination.
- A release of information must be obtained when requesting documentation from confidential sources and/or sharing information from the agency 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 customer'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. When hours exceed the RTS rationale must be provided. (Emphasis supplied)

Adult Service Manual (ASM),
§363, pp. 2, 3 of 24, 9-1-2008.

COORDINATION OF HHS WITH OTHER SERVICES

Coordinate available home care services with HHS in developing a services plan to address the full range of client needs.

Do not authorize HHS if another resource is providing the same service at the same time.

ASM, *Supra* at page 11

In the instant matter the Department witness, ██████████, testified that she went to the Appellant's residence to conduct a comprehensive assessment. She testified that she reviewed the Appellant's care plan with the provider and interviewed those present at the home. She said that the Appellant is diagnosed with Canavan Disease and a seizure disorder and that he is completely paralyzed requiring 24-hour care. With the exception of respiration the Appellant is ranked at level 5. See Department's Exhibit A, p. 16.

Owing to duplication of services HHS payments were reduced from \$ [REDACTED] to \$ [REDACTED] based on the observations, review of the care plan and assessment of the ASW. The following items represent the Department's reductions on in home assessment and the ALJ's agreement:

- Bathing was reduced from 22 minutes a day to 11 minutes a day which the ASW determined to an adequate amount of time for purposes of a once daily bed-bath performed by the provider who works outside of the home and has 12-hour skilled nursing assistance on a daily basis.
- Grooming was reduced from 12 minutes a day to 6 minutes a day which the ASW determined to be adequate for purposes of shaving, haircuts, nose cleaning, hair combing and finger nail maintenance. Performance of this task is the responsibility of the provider who works outside of the home and who has 12-hour skilled nursing assistance on a daily basis.
- Dressing was reduced from 18 minutes a day to 9 minutes a day which ASW determined to be adequate for the chore of changing the Appellant's night shirt for sleeping or occasional drooling. Performance of this task is the responsibility of the provider who works outside of the home and has 12-hour skilled nursing assistance on a daily basis.
- Toileting was reduced from 28 minutes a day to 14 minutes a day which the ASW determined to be adequate for purposes changing the Appellant's briefs twice during the evening hours as performed by the provider who works outside of the home and has 12-hour skilled nursing assistance on a daily basis.
- Mobility was reduced from 18 minutes a day to 9 minutes a day which the ASW determined to be adequate to push the Appellant [around the home] in his wheel chair as performed by the provider who works outside of the home and has 12-hour skilled nursing assistance on a daily basis.
- Medication was reduced from 6 minutes a day to 3 minutes a day which the ASW determined to be adequate as the duties are shared proportionally between the provider, who works outside of the home, and by the skilled nursing staff on site 12-hours a day. The specific hours of medication dispensing as conducted by the provider/guardian are: 6 AM, 7 AM, 8 PM, 9 PM and 12 AM.
- Laundry was reduced from 18 minutes a day to 14 minutes day which the ASW determined to be adequate time owing to a laundry schedule of 3 to 6 times a week, as performed by the provider who works outside of the home, and owing to information received by the ASW that the skilled nursing staff will do a load of laundry during the day.

- Meal preparation was reduced from 50 minutes a day to 25 minutes a day owing to preparation of a specialized diet which is prepared and administered by the skilled nursing staff in addition to the pureed, soy and formula solutions prepared by the provider [and refrigerated] for serving by skilled nursing staff during meal times – which duty is sometimes shared by the provider who works outside of the home.
- Eating was reduced from 60 minutes a day to 30 minutes a day as determined by the ASW to more accurately account for the actual time that food was placed into the Appellant's feeding tube and administered by the provider – who works outside of the home and has 12-hour skilled nursing assistance on a daily basis.
- Suctioning was reduced from 30 minutes a day to 15 minutes a day as determined by the ASW on interview of the provider, who works outside of the home, owing to the Appellant's history of requiring suctioning 5 times a day "...more when he is sick." The provider has 12-hour skilled nursing assistance on a daily basis.
- Specialized skin care was reduced from 60 minutes a day to 30 minutes a day based on the ASW's determination [and the provider's information] that the Appellant must be repositioned every 1½ to 2 hours during the day and every 4 – 6 hours at night. As the provider works outside of the home these chores are provided by skilled nursing staff during the day.
- Range of motion was reduced from 30 minutes a day to 14 minutes a day based on the ASW's determination that morning and evening exercises as conducted by the provider, who works outside of the home, are performed twice daily for 5 to 7 minutes per unit [morning and evening] and are also performed by skilled nursing staff in the provider's absence.

The chore of transferring was not reduced on in home comprehensive assessment, however the chores of housework and shopping were increased to the maximum and near maximum allowable limits under policy. See Testimony.

On review it is clear that the Appellant received a comprehensive assessment as directed by ALJ Colleen Lack in her order dated ██████████. The ASW followed Department policy, and "good practices" in addition to identifying and exploring family strengths in the development of a proper plan of service.

To that end the ASW spent an adequate amount of time at the Appellant's residence. She interviewed those present and assessed the Appellant's unique position in her capacity as an experienced adult service worker.

The result of the assessment led to a reduction in benefits [from the Department] to the Appellant owing to coordination of services between providers.

The ALJ is not aware of any set limits for completion of a comprehensive assessment – each client is different as are his particular hands-on needs. The policy sets forth minimum requirements, as listed above under ASM 363. Obviously, if the ASW believes there is need to investigate further she is not prohibited from so doing.

Department policy anticipates and addresses fluctuation of need. If the Appellant experiences a change in circumstance – either by way of increased need for services or decreased need for services – reassessment is available.

The assessment provided today was adequate. The Appellant did not preponderate his burden of proof that the Department's evaluation was deficient even if some questions were left unasked by the ASW.

Obviously, the Appellant requires significant care. This care is provided by the Appellant's mother [the provider] and by a skilled nursing agency. The provider – on the date of assessment told the ASW that she works two jobs [one full time and one part time] and that she is out of the home on a daily basis throughout her work week.¹

She added today that weekend skilled nursing duty was not as she represented to the ASW - because of frequent staff absences on the weekends. However, given the number of her employment hours during the week, and the increased provider duty on the weekend I find that the hour division between provider and agency is still accurate following the testimony of the parties as assessed by the ASW.

The Department is required to coordinate services. [*Supra* at ASM 363]

The Appellant did not preponderate his burden of proof that weekend provider duty [or daily duty] was misrepresented on comprehensive assessment.

A comprehensive assessment and the application of Department policy [ASM 363] is the responsibility of the ASW and I find that it was properly measured and applied to this Appellant.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly assessed the Appellant via an adequate comprehensive assessment.

¹ Admittedly, the Appellant's mother has a traditional albeit "flexible" schedule of employment - typically a 9 to 5 routine with the option of working from home when necessary. See Testimony of [REDACTED].

[REDACTED]
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Decision and Order

IT IS THEREFORE ORDERED that:

The Department's decision is **AFFIRMED**.

Dale Malewska
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 7/19/2010

***** 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.