

**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. 2010-3940 HHS

Case No. ██████████

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 ██████████ ██████████
██████████ guardian/choreprovider/representative, appeared on behalf of the Appellant.
██████████, appeals review officer, represented the Department. Her witness was
██████████ Also present was ASW supervisor ██████████.

ISSUE

Did the Department properly reduce the Appellant's home help services (HHS)?

FINDINGS OF FACT

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

1. At the time of hearing the Appellant is a ██████████ male Medicaid beneficiary.
2. The Appellant is afflicted with developmental delay, mental retardation with Bipolar Disorder 1 and epilepsy. Department Exhibit A, pp. 3, 6, 10
3. On ██████████, the ASW conducted a yearly assessment for the Appellant that led to a reduction in services owing to a shared household and reduction of chore grant for the activities of bathing, grooming, dressing and the elimination of the task of toileting. Department's Exhibit A, pp. 12, 13 and See Testimony

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4. On ██████████, an advance negative action notice was sent to the Appellant informing him of the reduction and his further appeal rights. (Department's Exhibit A, pp. 2, 7, 8)
5. The ASW observed the Appellant at the ARC, his workplace, instead of the home. She reported him to be "...upbeat." (Department's Exhibit A, p. 9)
6. The advance negative action notice specified that the reduction set the Appellant's HHS payment at ██████████ per month based on 32:39 hours. The prior grant was ██████████ per month based on 83:19 hours. (Department's Exhibit A, pp. 7, 13)
7. The Appellant's representative agreed on the record that (3) three adults lived in the home. The proration formula was applied by a divider of (2) two. (See Testimony)
8. The Appellant, through his representative, executed an appeal on ██████████, ██████████ (Appellant's Exhibit #1)
9. That appeal was received by SOAHR on ██████████. Appellant's Exhibit #1)

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 (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.

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 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 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
- 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. (Emphasis supplied) Adult Service Manual (ASM), §363, Pages 2, 3 of 24, September 1, 2008.

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.

[•]

- 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). (Emphasis supplied) *Supra*, pp. 4 and 5 of 24.

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The Department witness testified that on receipt of the file the HHS payment seemed high. She levied reductions for the Appellant's IADLs and reduced or eliminated other ADL services following her observation of the Appellant at his place of employment. He was not assessed in the home. The Department's exhibit does not suggest that he has ever received a comprehensive assessment in the home as required under policy. [See Testimony and Appellant's Exhibit #1 at p. 3]

The Appellant's representative said that Appellant was an otherwise agreeable man who appears to be high functioning when the reality is otherwise. The testimony shows that a comprehensive assessment was not drawn according to policy. Policy requires an in-home assessment. And the caregiver should have been present for the assessment - particularly in this case.

It was agreed at hearing that the Appellant lives in a shared household with his parents – so the reductions to the IADLs were not disputed.

As for the Activities of Daily Living (ADLs) reductions were not supported by the bulk of the evidence presented by the Department's witness, Williams.

The following items summarize the ADL/IADL reductions and the ALJ's agreement or disagreement:

- Housework was reduced to reflect a shared household.
- Meal preparation was reduced to reflect a shared household.
- Shopping was reduced to reflect a shared household.
- Medication was reduced to reflect a shared household and owing to the limited number of medications presently consumed by the Appellant
- Laundry was reduced to reflect a shared household
- Meal preparation – although further explained at hearing was not further reduced according to the Department's Exhibit A, at page 13.

The ALJ concurs with these policy-based reductions.

The following items summarize the remaining ADL reductions or eliminations where the ALJ is not in agreement and explains why:

- Bathing was reduced from 30-minutes a day to 10-minutes a day based on a telephone call to the Appellant's guardian wherein she advised the ASW that the Appellant soaks for thirty minutes before she applies washing action. At hearing the reality was explained by the Appellant's guardian that she applies a prescription shampoo to the Appellant – which must sit for 5 minutes – before rinsing. Then she does the washing and rinsing of the Appellant's entire body – owing to the Appellant's compulsive tendency to scrub only one body part. The entire hands on process given the Appellant's body habitus takes thirty minutes.

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- Grooming was reduced from 15-minutes a day to 5-minutes a day based on the ASW's understanding that all the caregiver does is apply an unknown cream to the Appellant's back. She authorized a "couple of minutes to shave" the Appellant as well. At hearing the Appellant's guardian explained that grooming consisted of the hands on chores of daily nail clipping, hair trimming [including nose, ears, eyebrows] hair brushing and combing in addition to barber-shop duties every fifth week. The entire grooming task takes 15-minutes per day.
- Dressing was reduced from 15-minutes a day to 5-minutes a day based on the telephone conversation with the Appellant's guardian that she merely "lays out his clothes and buckles." See Department's Exhibit A, at page 14. At hearing the Appellant's guardian explained that while the Appellant is capable of retrieving clothing he has no concept of season. Accordingly, she selects weather and task appropriate clothing and assists him with the actual dressing function in particular - zippers. She added that at the time of the assessment she was in the process of doing a hands-on review of the Appellant's zipper oriented clothing to determine if another fastening method was possible. The entire dressing task was correctly established at 15- minutes daily.
- Toileting was eliminated because of the ASW observation at the ARC, comments from staff that they did not help the Appellant and because of the guardian's answer on telephone call that he could go to bathroom independently. Omitted from this analysis was information concerning the Appellant's tendency for frequent toileting accidents, which remain in his pants until he gets home or parents are summoned to the ARC. The Appellant's guardian also explained that the Appellant demonstrates poor technique when performing the toileting function. The appropriate time allotment for toileting was established at 5-minutes a day.

In conclusion I find that the Department improperly reduced the ADLs of bathing, grooming, dressing and improperly eliminated the task of toileting. They are returned to the status quo ante. I found the task of medication appropriately reduced given the limited number of medications the Appellant voluntarily consumes twice daily – without argument. If that process were to change it would represent a change in condition from those presently extant and could merit another review.

Policy requires an in-home assessment. The ALJ observes that if such a comprehensive assessment had been conducted in the presence of the Appellant and his choreprovider the many nuances of hands-on care¹ forestalled by the ASW could have been credibly explained by the Appellant's representative – perhaps obviating the need for hearing.

¹ Many of which required application of medically prescribed soaps and creams unknown to the ASW.

As for the prorated reduction for a shared household – the reduction was appropriate and supported by policy. The ALJ notes that further reductions based on the number of people living in the home [beyond half] may be made, “if appropriate.”²

A comprehensive assessment and the degree of proration is the responsibility of the ASW and I find that it was both properly and improperly applied to this Appellant.

The Department’s proofs for the ADL reductions and task elimination fail on the critical issue of the ASW’s observation of the Appellant’s actions at the ARC. The testimony of the Department’s witness does not support the conclusions she reached based on that observation. Clearly, Appellant’s representative tested the ASW’s testimonial details at hearing and found “inconsistencies and impossibilities.” McCormick, Evidence, (4th ed), §30, p. 40.

The evidence does support the medication reduction and a shared household prorated reduction.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department’s decision is affirmed, in part, and reversed, in part.

IT IS THEREFORE ORDERED that:

The Department shall reinstate to the status quo ante the Appellant’s ADL s of bathing, grooming, dressing and toileting.

The task reduction for medication is affirmed as is the shared household proration reduction [by half].

The Department’s decision is **AFFIRMED**, in part, and **REVERSED**, in part.

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

² See ASM 363 pp. 5 of 24, 9-1-08

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CC:



Date Mailed: 12/23/2009

***** 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.