

**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. 2010-39426 HHS
Case No. [REDACTED]

[REDACTED],

Appellant

_____ /

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ) 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]. The Appellant appeared without representation. He had no witnesses. [REDACTED], represented the Department. Her witness was [REDACTED].

PRELIMINARY MATTER

The Appellant is mute [speech impaired], but he is not hearing impaired. He is fully oriented and can read and write extremely well. He is highly educated. Prior to hearing the Appellant expressed his desire to proceed with hearing by way of written testimony – to be read into the record by [REDACTED] and then sent to the ALJ following hearing via the U.S. Mail. The Appellant's written testimony was received on [REDACTED]. It was entered into the record as his Exhibit #2.

ISSUE

Did the Department properly establish Home Help Services (HHS) 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. At the time of hearing the Appellant is a [REDACTED], disabled, Medicaid beneficiary. (Appellant's Exhibit #1)

2. The Appellant is afflicted with DM, RA, rheumatism, obesity, and “[i]ver malfunction.” (Department Exhibit A, pp. 2, 8, 12 and Appellant’s Exhibit #1)
3. On or about ██████████ and ██████████, a home help assessment was conducted of the Appellant which established a need for HHS for IADLs. (Department’s Exhibit A, p. 2.)
4. This assessment resulted in a total care cost of ██████████ per month at 35 hours and 15 minutes. (Department’s Exhibit A, pp. 2, 5, 9)
5. On ██████████ a services approval notice was sent to the Appellant advising of the total hours with the effective date of ██████████. (Department’s Exhibit A, pp. 2, 5)
6. The instant request for hearing 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 health professional 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.

The Department witness reported that the Appellant needed HHS for the IADLs of; housework, laundry, shopping and meal preparation. At the beginning of service the department authorized a major clean-up of the Appellant's residence owing to accumulated clutter that the Appellant was not able to deal with owing to his failing health.

The Appellant testified that his home is a "big, old, dusty home" and that he had difficulty getting and keeping chore providers because "it takes a lot of time to clean."

He added that he has not had a chore provider for the last (3) three weeks – although ██████████ said that she expected that to be remedied on or about ██████████ – when the Appellant's ASW returned to work. He added that he seeks an increase to 43 hours – to better ensure continuity of service from the chore providing agency.

The following values represent the Department's assessment and the ALJ's agreement:

- Housework was established at 12 minutes a day, 7 days a week for a total of 6:01 hours a week.
- Laundry was established at 14 minutes a day, 2 days a week for a total of 2 hours a week.
- Shopping was established at 10 minutes a day, 3 days a week for a total of 2:09 hours a week
- Meal preparation was established at 50 minutes a day, 7 days a week for a total of 25:05 hours a week.

On review, the evidence established that the Appellant's current needs were properly assessed and categorized. If the Appellant is experiencing an adverse change in his medical condition which requires additional services he needs to contact his ASW to schedule a reassessment immediately.

If the Appellant is experiencing an adverse staffing issue he needs to remember that he is the employer and has the right to hire and fire. His ASW is required assist the Appellant in locating and securing qualified providers if he needs assistance with that task – an issue not raised today, but one which I believe to be the Appellant's main problem.

The evidence established that the assigned services meet the Appellant's afflictions in the proper amount, scope and duration.

The greater weight of the evidence established that the assessments and reviews conducted on ██████████, and ██████████ were accurate and that HHS benefits were properly determined.

There is no dispute that the Appellant needs HHS – however his argument for additional hours for clean-up duty has already been addressed. His personal needs have been identified, ranked and evaluated. Additional hours, absent a change in condition, are not supported by the evidence. The Appellant has failed to preponderate his burden of proof.

The Department's decision to establish the HHS at ██████████ [35 hours and 15 minutes] was correct when made.

[REDACTED]
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DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law decides that the Department properly established the Appellant's HHS.

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: 9/15/2010

***** 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.