

**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. 2011-1495 HHS
Case No. 1381238

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 the Appellant's behalf. ██████████ was present. ██████████, appeared as a witness for the Appellant. ██████████ represented the Department. ██████████, appeared as a witness for the Department.

ISSUE

Did the Department properly reduce the Appellant's Home Help Services (HHS) payments?

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 ██████████ Medicaid beneficiary.
2. The Appellant has been diagnosed with Downs Syndrome, hearing loss in one ear, and gouty arthritis of the right hip. (Exhibit 1, page 13)
3. The Appellant participates in numerous sports, competes at the Special Olympics and has been employed at various businesses. (ASW Testimony)
4. The Appellant was receiving Home Help Services (HHS) for assistance with bathing, grooming, dressing, toileting, medication, housework, laundry, shopping, and meal preparation. (Exhibit 1, page 9)

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5. On [REDACTED], the Adult Services Worker made a visit to the Appellant's home to conduct a Home Help Services assessment. (Exhibit 1, page 8)
6. As a result of the information gathered from the assessment, the worker determined that the Appellant's HHS hours for bathing and dressing should be eliminated and the HHS hours for grooming should be reduced. (ASW Testimony) The HHS hours for laundry were also reduced. (Exhibit 1, pages 9 and 12)
7. On [REDACTED], the Department sent an Advance Negative Action Notice to the Appellant indicating that his Home Help Services payments would be reduced to \$ [REDACTED] effective [REDACTED]. (Exhibit 1, pages 5-7)
8. On [REDACTED], the State Office of Administrative Hearings and Rules received the Request for Hearing filed on the Appellant's behalf. The hearing request was resubmitted with the Appellant's signature on [REDACTED]. (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.

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.
- 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).

Services not Covered by Home Help Services

Do **not** authorize HHS payment for the following:

- Supervising, monitoring, reminding, guiding or encouraging (functional assessment rank 2);
- Services provided for the benefit of others;
- Services for which a responsible relative is able and available to provide;
- Services provided free of charge;
- Services provided by another resource at the same time;
- Transportation - See Program Administrative Manual (PAM) 825 for medical transportation policy and procedures.
- Money management, e.g., power of attorney, representative payee;
- Medical services;
- Home delivered meals;
- Adult day care.

*Adult Services Manual (ASM) 363, 9-1-2008,
Pages 2-15 of 24*

The Adult Services Worker (ASW) completed a home visit as part of a comprehensive assessment on ██████████. The ASW testified that the Appellant's that HHS hours authorized for Appellant were reduced because the HHS program does not cover verbal assistance, only hands on care. HHS hours for bathing and dressing were deleted because he needs reminders with this activity, not hands on care. She explained that the HHS hours for grooming were reduced because he also only requires verbal assistance for most tasks, but does receive hands on assistance with clipping his nails once per month. Accordingly the Appellant's rankings were adjusted to level 2 for bathing and dressing, and the adjustments were made to the time and task authorization. (ASW Testimony and Exhibit 1, pages 9, 12, and 14-15)

The Appellant's ██████████ disagrees with the HHS reductions and testified that the Appellant needs constant reminders and direction while bathing to complete this activity appropriately. She also explained that he needs daily reminders for grooming activities such as shaving for work when he is employed, as well as reminders and direction to brush his teeth. Regarding dressing, the Appellant's ██████████ indicated the Appellant must be directed to specific clothing so that he is dressed appropriately for work when employed. (██████████ Testimony) The Appellant's ██████████ testified that the Appellant must also be directed to dress in clothing appropriate for the weather conditions.

The termination of HHS hours for bathing and dressing, and the reduction to the HHS hours for grooming are supported by the evidence. Based on the testimony of the Appellant's ██████████ and ██████████, the Appellant is only receiving verbal assistance with bathing, dressing and most grooming activities. Under the above cited HHS program policy, HHS payments can not be authorized for verbal assistance such as supervising, monitoring, reminding, guiding or encouraging (functional assessment rank 2). As discussed during the hearing, the Appellant's ██████████ may wish to contact Community Mental Health regarding any service programs that may cover the verbal assistance the Appellant requires.

While not addressed by the Department during the hearing, the HHS hours for laundry were also reduced. The ASW's testimony did not indicate this was an intended reduction. It appears that this was an error transposing two numbers as the authorized monthly HHS hours for laundry changed from 3 hours and 31 minutes per month to 3 hours and 13 minutes per month. (Exhibit 1, pages 9 and 12) The Appellant's HHS hours for laundry shall be returned to the previously authorized 3 hours and 31 minutes per month.

Additionally, it appears that the Department intends to make the reductions to the Appellant's case retroactive to ██████████. (Exhibit 1, ape 5) The Code of Federal Regulations, Chapter 42 addresses the Appellant's rights with respect to Advance Negative Notice of an agency action:

§ 431.211 Advance notice.

The State or local agency must mail a notice at least 10 days before the date of action, except as permitted under §§ 431.213 and 431.214 of this subpart.

§ 431.213 Exceptions from advance notice.

The agency may mail a notice not later than the date of action if—

- (a) The agency has factual information confirming the death of a recipient;
- (b) The agency receives a clear written statement signed by a recipient that—

- (1) He no longer wishes services; or
- (2) Gives information that requires termination or reduction of services and indicates that he understands that this must be the result of supplying that information;
- (c) The recipient has been admitted to an institution where he is ineligible under the plan for further services;

- (d) The recipient's whereabouts are unknown and the post office returns agency mail directed to him indicating no forwarding address (See § 431.231 (d) of this subpart for procedure if the recipient's whereabouts become known);
- (e) The agency establishes the fact that the recipient has been accepted for Medicaid services by another local jurisdiction, State, territory, or commonwealth;
- (f) A change in the level of medical care is prescribed by the recipient's physician;
- (g) The notice involves an adverse determination made with regard to the preadmission screening requirements of section 1919(e)(7) of the Act; or
- (h) The date of action will occur in less than 10 days, in accordance with § 483.12(a)(5)(ii), which provides exceptions to the 30 days notice requirements of § 483.12(a)(5)(i)

§ 431.214 Notice in cases of probable fraud.

The agency may shorten the period of advance notice to 5 days before the date of action if—

- (a) The agency has facts indicating that action should be taken because of probable fraud by the recipient; and
- (b) The facts have been verified, if possible, through secondary sources.

The ██████████, Advance Negative Action Notice issued by the Department clearly failed to provide the Appellant with the required advance notice of at least 10 days that his HHS payments would be reduced as the effective date of the reduction was ██████████. (Exhibit 1, page 5) None of the exceptions to the advance notice requirement were present in this case. Therefore, the Department should not have made the effective date for the reductions to the Appellant's Home Help Services case any earlier than ██████ days from the date of the Advance Negative Action Notice.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department did not properly reduce the Appellant's HHS payments. The HHS hours for laundry should not have been reduced and the effective date for the reductions can not be any earlier than ██████ days from the ██████████, Advance Action Notice.

IT IS THEREFORE ORDERED THAT:

The Department's decision is PARTIALLY REVERSED. The reduction of HHS hours for laundry is REVERSED. The HHS hours for laundry shall be returned to the previously

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authorized 3 hours and 31 minutes per month. Further, the reductions to the Appellant's HHS payment must not be effective any earlier than [REDACTED] days from the [REDACTED], Advance Action Notice.

Colleen Lack
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 1/13/2011

***** 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.