

**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. 2011-15312 HHS
Case No. 27591558

██████████,

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 ██████████. ██████████, ██████████, appeared on the Appellant's behalf. ██████████, appeared and testified. ██████████, 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 multiple medical diagnosis, including spina bifida, blindness, infantile cerebral palsy, scoliosis, dysphagia, seizures, central nervous system apnea, and reactive airway disease. (Exhibit 2, page 2)
3. The Appellant's ██████████ is his HHS chore provider. (Exhibit 1, pages 11-12)
4. The Appellant had been receiving Home Help Services (HHS) with a care cost of \$ ██████████ per month. (Exhibit 1, pages 12 and 14)
5. The Appellant receives about 16 hours per day of nursing services through the HAB Waiver program. ██████████ Testimony and Exhibit 3, page 1)

6. On [REDACTED], a newly assigned Adult Services Worker (ASW) made a visit to the Appellant's home to conduct a Home Help Services assessment. (Exhibit 3, page 1)
7. The ASW requested information regarding what assistance the Appellant receives from the nurses as well as how much assistance his [REDACTED] provides. (Exhibit 1, page 15 and Exhibit 3, page 1)
8. The ASW also consulted an RN in the Department of Community Health Central office. (ASW Testimony)
9. As a result of the information gathered from the assessment, the ASW determined that the Appellant's HHS hours for meal preparation should be eliminated, the HHS hours for bathing, grooming, dressing, toileting, transferring, eating, mobility, and shopping should be reduced. The worker also added HHS hours for eating, catheters or leg bags, specialized skin care, and range of motion exercises. (Exhibit 1, pages 12-13)
10. 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 5-8)
11. On [REDACTED], the State Office of Administrative Hearings and Rules received the Request for Hearing filed on the Appellant's behalf. (Exhibit 1, page 3)

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 [REDACTED]. The ASW was newly assigned to the Appellant's case and gathered information regarding what assistance is provided to the Appellant by the nurses that provide services for about 16 hours per day through the HAB Waiver program, and what assistance the Appellant's mother provides. The Appellant's [REDACTED] needed time to come up with how long it takes her to do things. Additionally, the ASW consulted with an RN in the Department of Community Health central office regarding assistance with each home care activity. (ASW Testimony, Exhibit 1, page 15 and Exhibit 3, page 1) The ASW reduced the number of days per week assistance is provided for some activities based on the information provided by the Appellant's mother. (ASW Testimony and Exhibit 1, pages 12-13) The ASW eliminated the HHS hours for meal preparation because the Appellant is tube fed, but added HHS hours for eating assistance to compensate the Appellant's [REDACTED] for unhooking and cleaning.

(ASW Testimony and Exhibit 1, pages 12-13) The ASW also reduced the HHS hours for shopping in accordance with the Department's policy on shared households and added HHS hours for catheters or leg bags, specialized skin care, and range of motion exercises. (ASW Testimony and Exhibit 1, pages 12-13)

The Appellant's ██████████ disagrees with the reductions and testified that the work has increased but the pay has decreased. She agreed that she only bathes the Appellant twice per week, but stated that it takes 45 minutes rather than the 21 authorized by the ASW. (██████████ Testimony and Exhibit 1, pages 12-13) The Appellant's ██████████ also contested the times authorized for transferring, grooming, dressing, mobility, toileting, range of motion exercises, housework, and laundry.

The policy implemented by the Department recognizes that in most cases, certain tasks are performed that benefit all members who reside in the home together, such as cleaning, laundry, shopping and meal preparation. Normally, it is appropriate to pro-rate the payment for those tasks in a shared household, as the Appellant's family members would have to clean their own home, make meals, shop and do laundry for themselves if they did not reside with the Appellant. The HHS program will not compensate for tasks that benefit other members of a shared household. Accordingly, the authorized hours for these activities must be prorated under Department policy. Exceptions can be made when there is justification for performing an activity separately, such as incontinence. In this case, the Department did not prorate the HHS hours for laundry, which corresponds with the Appellant's mother's testimony regarding incontinence. (Exhibit 1, pages 12-13)

Department policy allows for a maximum of 6 hours per month for housework, 5 hours per month for shopping, 7 hours per month for laundry and 25 hours per month for meal preparation. In the present case, the Department ranked the Appellant at level 5 for each of these activities, indicating he is dependant on others and needs the maximum level of assistance. After proration for the shared household, the Department authorized 3 hours and 1 minute per month for housework and 2 hours and 30 minutes per month for shopping. The HHS hours for laundry were not prorated and remained at the maximum of 7 hours and 1 minute per month. (Exhibit 1, page 13) The HHS hours for meal preparation were properly eliminated because the Appellant is tube fed.

While the Appellant's ██████████ disagrees with the overall reduction to the Appellant's HHS hours, the ASW made these adjustments to the Appellant's case based on the information gathered for the comprehensive assessment. The ASW properly considered that the Appellant receives assistance with his ADL's from the nursing services through the HAB waiver. The reduction in the number of days per week HHS hours were authorized for the ADL's was based on the Appellant's mother's report of how frequently she provides assistance with those activities. The ASW also made adjustments to the Appellant's time and task authorization in accordance with his actual needs, such as eliminating the HHS hours for meal preparation but adding HHS hours for eating, catheters or leg bags, specialized skin care, and range of motion exercises. The case notes indicate the ASW allowed additional time for the Appellant's ██████████ to provide information regarding how long it takes to assist the Appellant with things.

(Exhibit 1, page 15) The ASW also utilized the Department's reasonable time schedule and consulted with a RN in the Department of Community Health central office before adjusting the Appellant's HHS hours. (Exhibit 1, page 15, Exhibit 3, page 2, ASW Testimony) The adjustments to the Appellant's HHS hours are upheld based on the information available at the time of the assessment.

The Appellant's [REDACTED] testimony and [REDACTED] documentation of Tasks & Time for the assistance she provides to the Appellant indicates she may now have a better estimate of how long it takes to assist the Appellant with certain activities than she had at the time of the assessment. (Exhibit 2, page 1) Her testimony also indicated that the Appellant has a bowel program, which the ASW was unaware of. [REDACTED] and ASW Testimony) These issues should be considered by the ASW in determining the appropriate authorization of ongoing HHS hours.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department did properly reduce the Appellant's HHS payments based on the available information.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

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

cc:

[REDACTED]

Date Mailed: 4/22/2011

***** 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.