

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF:

██████████,

Appellant.

_____ /

Docket No. 2011-25165 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 ██████████. Appellant appeared on his own behalf. ██████████, represented the Department of Community Health. ██████████, Appellant's Adult Services Worker (ASW) at the ██████████ DHS Office, appeared as a witness for the Department.

ISSUE

Did the Department properly reduce 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. Appellant is a ██████ year-old Medicaid beneficiary.
2. Appellant has been diagnosed by a physician with chronic back pain, hypertension (HTN), depression, sleep apnea, diabetes, and cervical radiculopathy. Appellant has also diagnosed himself as having depression/bad nerves. (Exhibit 1, page 8).
3. Appellant had been receiving 33 hours and 6 minutes of Home Help Services with a care cost of ██████ per month. (Exhibit 2, page 3).
4. On ██████████ ASW ██████████ and her supervisor conducted a home visit with Appellant. ██████████ had recently been assigned Appellant's case file. ██████████ also conducted an interview with Appellant's chore provider on ██████████. (Exhibit 1, pages 17-19).

5. Based on her assessment and information provided by both Appellant and his provider, ASW ██████████ reduced the HHS hours authorized for meal preparation/cleanup and laundry. The time allocated for shopping remained the same. ██████████ also kept the total HHS hours for housework the same while reducing the number of days for that task. Additionally, ██████████ added some HHS time for bathing and grooming. The changes resulted in a total of 18 hours and 29 minutes of HHS per month, with a monthly care cost of ██████████. (Exhibit 1, page 12; Exhibit 2, page 3).
6. On ██████████, ASW ██████████ issued an Advance Negative Action Notice to Appellant indicating that his Home Help Services payments would be reduced effective ██████████. (Exhibit 1, pages 3-6).
7. On ██████████ the Department received Appellant's Request for Hearing. In that request, Appellant argues that the Department improperly removed hair braiding from his grooming service and cut his meal preparation from two days a week to one day a week. (Exhibit 1, page 2).

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 Manuals 361 (6-1-07) (hereinafter "ASM 361") and Adult Services Manual 363 (9-1-08) (hereinafter "ASM 363") address the issues of what services are included in Home Help Services and how such services are assessed:

Home Help Payment Services

Home help services (HHS, or personal care services) are non-specialized personal care service activities provided under ILS to persons who meet eligibility requirements.

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.

Personal care services which are eligible for Title XIX funding are limited to:

Activities of Daily Living (ADL)

- Eating.
- Toileting.
- Bathing.
- Grooming.
- Dressing.
- Transferring.
- Mobility.

Instrumental Activities of Daily Living (IADL)

- Taking medication.
- Meal preparation/cleanup.
- Shopping for food and other necessities of daily living.
- Laundry.
- Housework.

(ASM 361, page 2 of 5)

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 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:

- Five hours/month for shopping
- Six hours/month for light housework
- Seven 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.

(ASM 363, pages 2-4 of 24)

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.

(ASM 363, pages 14-15 of 24)

Grooming

In the most recent assessment, ASW ██████████ added 5 minutes a day, 1 day a week for grooming. According to ASW Serrano, this addition of time was added because Appellant needs assistance in combing his hair after it is washed and Appellant gets his hair washed one day a week. There was also some testimony from both ASW ██████████

and Appellant that Appellant had previously been receiving HHS for grooming and that it had been removed by another worker during the last assessment that worker did. Appellant does not dispute the specific time allocated for combing hair. However, Appellant does want additional grooming time in order for the provider to braid his hair. In her notes and emails, ASW ██████████ wrote that Appellant wanted a specific style of braiding and, after ██████████ checked with her supervisors, she informed Appellant that hair braiding is not covered by HHS. (Exhibit 1, pages 7, 13-18). In his request for hearing, Appellant wrote that “They have removed my hair braiding from my grooming service. Having my hair braided is part of my culture.” (Exhibit 1, page 2). During the hearing, Appellant testified both that hair braiding is part of his culture and that braiding his hair is also a matter of neatness and grooming.

As stated in the Functional Assessment Definitions and Ranks of Activities of Daily Living, “Grooming” is “Maintaining personal hygiene and neat appearance, including hair combing and brushing, oral hygiene, shaving, fingernail and toenail care (unless toenail care is medically contraindicated).” Adult Services Manual 365 (10-1-99), page 1 of 2. Given that definition, HHS time for hair braiding should not have been authorized. As discussed above, while Appellant testified during the hearing that the hair braiding is necessary for personal hygiene and neatness, it does not appear that he told ASW ██████████ that during the assessment. Appellant’s request for hearing, his testimony, and the ASW’s notes/emails all demonstrate that Appellant disputed the authorization of time for grooming solely on the basis that having his hair braided is part of his culture. The policies make no provision for cultural or style concerns and, based on the information available to the Department at the time of the decision, Appellant’s grooming needs could be met through the time allocated for combing his hair. Accordingly, the Department’s decision with respect to grooming must be sustained.

Meal Preparation and Cleanup

With respect to meal preparation and cleanup, Appellant’s HHS hours were reduced from 30 minutes per day, 7 days a week, to 12 minutes per day, 1 day a week. (Exhibit 1, page 2; Exhibit 2, page 3). ASW ██████████ notes and testimony provide that Appellant told her that he gets meals delivered throughout the week. (Exhibit 1, pages 15-17). Moreover, as observed by ASW ██████████ and reflected in Appellant’s rankings for mobility, transferring and toileting, Appellant has the ability to prepare those delivered frozen meals or other simple meals. (Exhibit 1, pages 10, 15-17). ASW ██████████ also noted and testified that Appellant’s provider told her that the provider only prepared one meal a week for Appellant and that she primarily based the reduced meal preparation on what the provider said the provider actually did. (Exhibit 1, pages 15). Appellant does not dispute that he gets meals delivered three times a week and that those deliveries include frozen meals for days that deliveries do not occur, but he also testified that he cannot prepare meals himself and that he needs assistance from his provider.

Appellant’s testimony is completely contradicted by what the provider told ASW ██████████ and the provider had no reason to downplay the work she did. Appellant disputes his ranking for meal preparation and cleanup, but his past practice disproves his claim.

**Docket No. 2011-25165 HHS
Decision and Order**

ASM 363 provides that HHS should be limited to those services that the client needs. Here, based on what has been occurring in the past, Appellant only needs assistance with one meal a week. Accordingly, based on the information available at the time of the decision, the Department's decision to reduce the time for HHS for meal preparation and cleanup is sustained.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

Steven Kibit
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:

Date Mailed: 6/24/2011

***** NOTICE *****

The Michigan Administrative Hearing System 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 Michigan Administrative Hearing System 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.