

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH
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IN THE MATTER OF:

Docket No. 2011-26265 HHS
Case No. [REDACTED]

[REDACTED],

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 [REDACTED]. [REDACTED], attorney and friend, appeared on the Appellant's behalf. [REDACTED], the Appellant appeared and testified. [REDACTED] caregiver, and [REDACTED], [REDACTED], appeared as witnesses for the Appellant. [REDACTED], Manager Appeals Section, represented the Department. [REDACTED], Adult Services Worker, and [REDACTED], Adult Services Supervisor, appeared as witnesses 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 a [REDACTED]-year-old Medicaid beneficiary.
2. The Appellant has been diagnosed with cerebral palsy spastic quadriplegia, fibromyalgia and post cancer [REDACTED]. (Exhibit 1, page 20)
3. On [REDACTED], the ASW made a visit to the Appellant's home as part of a six month review of her Home Help Services case. (Exhibit 1, page 13)
4. On [REDACTED], the ASW had a telephone contact with the Appellant regarding splitting the HHS authorization between her two care providers, the frequency of bathing was discussed and the Appellant indicated she did not have a thorough understanding of what each provider should be doing. The ASW noted that the payments would be adjusted due to the

frequency of bathing. (Exhibit 1, page 12)

5. On ██████████, the Department sent an Advance Negative Action Notice to the Appellant indicating her Home Help Services payments would be reduced to ██████████ effective ██████████. (Exhibit 1, pages 4-6)
6. On ██████████ the Appellant filed a Request for hearing contesting the computation of hours, requesting an increase in her Home Help Services authorization, and specifically addressed bed sore management and prevention. (Exhibit 1, pages 2-3)
7. On ██████████, the ASW made a visit to the Appellant's home as part of an annual redetermination of her Home Help Services case. (Exhibit 1, page 10)
8. As a result of the information gathered from the assessment, the ASW determined that the Appellant's HHS hours for transferring should be reduced and HHS hours should be added for wound care. (ASW Testimony and Exhibit 1, page 10)
9. On ██████████, the Department sent an Advance Negative Action Notice to the Appellant indicating her Home Help Services payments would be reduced to ██████████ effective ██████████. (Exhibit 1, pages 7-9)

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 2-15 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. When hours exceed the RTS rationale must be provided.

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.

Note: Unavailable means absence from the home, for employment or other legitimate reasons. **Unable** means the responsible person has disabilities of his/her own which prevent caregiving. These disabilities must be documented/verified by a medical professional on the DHS-54-A.

- 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*

During the hearing proceedings, the Department presented testimony relating to the [REDACTED] home visit and stated that the only reduction made to the Appellant's HHS hours was for transferring. (ASW Testimony) Upon review of the documentation submitted by the Department, this is not accurate. It appears that the ASW reduced the Appellant's HHS hours for bathing based on a [REDACTED] telephone contact. (Exhibit 1, pages 4-6 and 12) On [REDACTED] the Appellant filed a Request

for Hearing contesting the computation of hours, requesting an increase in her Home Help Services authorization, and specifically addressed bed sore management and prevention. (Exhibit 1, pages 2-3) On ██████████, the ASW made a visit to the Appellant's home as part of an annual redetermination of her Home Help Services case. (Exhibit 1, page 10) As a result of the information gathered from the assessment, the ASW determined that the Appellant's HHS hours for transferring should be reduced and HHS hours should be added for wound care. (ASW Testimony and Exhibit 1, page 10) The Appellant did not present any evidence contesting the HHS hours authorized for bathing. Rather, the testimony the Appellant and her witnesses provided during the hearing proceedings specifically addressed bed sore management and prevention. (Exhibit 1, pages 2-3) Accordingly, this ALJ will review the authorizations the ASW made for assistance with transferring and wound care.

Wound Care

The ASW authorized 4 hours and 18 minutes per month, 15 minutes per day 2 days a week for each of the Appellant's two enrolled providers, for wound care under the activity "specialized skin care". The ASW testified this was based on the Appellant's report during the home visit that she receives 4 days of treatment for her pressure sores per week and cream is only applied if needed. (ASW Testimony and Exhibit 1, pages 18-19)

The Appellant's witnesses testified that the Appellant requires daily foot care, daily visual examination for pressure sores, and treatment of existing pressure sores, which can vary depending on the stage of the pressure sore. The Appellant's caregiver also explained that due to the location, the area where the Appellant gets pressure sores can not be visualized while she is sitting, therefore hands on care is required to view the area. She stated that the Appellant sits in a chair, with wedging, 24 hours a day.

The Appellant's witnesses were not present for the home visit. The ASW credibly testified that she was not told about the Appellant's need for daily foot care during the home visit. Accordingly, the ASW could not have considered this information when she made the HHS authorization. While the Appellant's caregiver's testimony regarding how frequently moisture barriers or other treatments are provided was credible, this was not the information provided to the ASW during the home visit. This ALJ also understands that the area where the Appellant gets pressure sores can not be seen when the Appellant is sitting. However, it is not clear that the daily visual inspection is done independent of assistance with any other ADL. For example, the area can be visualized while assistance is provided with other activities, such as bathing and toileting.

The authorization of HHS hours for wound care was appropriate based on the information the ASW was provided during the home visit. However, the HHS hours may need to be adjusted for this activity after a new assessment is completed. The Department may request, or the Appellant may wish to provide documentation to the Department, from the Appellant's doctor regarding the Appellant's pressure sores and any wound care provided by her HHS chore providers.

Transferring

The ASW stated there was a limit of 10 minutes per day for transferring so she reduced the Appellant's HHS hours for this activity to 5 minutes per day, 7 days per week for each caregiver. This allowed for a total of 5 hours per month for transferring assistance. (ASW Testimony and Exhibit 1, pages 18-19) The ASW's [REDACTED] home visit case note also indicates the Appellant's HHS hours for transferring were reduced from 20 minutes per day to 10 minutes per day based on a maximum allowance. (Exhibit 1, page 10) The ASW explained that this would bring the Appellant's case in line and make it comparable to other cases. The ASW also testified that she did not see the need for an increase because the Appellant was not using all of the hours currently authorized according to the sign in/log sheets she reviewed during the home visit.

The Appellant's witnesses provided credible detailed testimony regarding the difficulties in transferring the Appellant with her current Hoyer lift, which requires additional time. However, the Appellant's caregiver's testimony indicated that because the lift does not fit well in some areas of the Appellant's home, some she has to pick the Appellant up and carry her.

The reduction to the Appellant's HHS hours for transferring can not be upheld. The ASW did not base the authorized 10 minutes per day on the Appellant's circumstances, but rather what she stated was a program limit and to bring the Appellant's case in line with other cases. The Department policy does not impose a maximum time for the ADL's and medication. Rather, the worker is to use the Reasonable Time Schedule as a guide and can adjust the times as appropriate. Policy only requires the worker to provide a rationale when the authorized hours exceed hours of the Reasonable Time Schedule. (Adult Services Supervisor Testimony and *Adult Services Manual (ASM) 9-1-2008, Page 3 of 24.*) The local office can approve an expanded Home Help Services case when the payment will be between \$550 - \$1299.99 a month plus the client /employer's FICA allowance, but for a payment of \$1300 and over a month plus the client /employer's FICA allowance, central office approval is required. *Adult Services Manual (ASM) 9-1-2008, Page 21 of 24.*

Additional time for assistance with transferring is reasonable in the Appellant's case in light of her individual circumstances. However, it was not clear how long it takes to transfer the Appellant by lifting and carrying and how many transfers are completed using the lift or by just carrying the Appellant. Accordingly, the HHS hours for transferring shall be returned to 20 minutes per day until a new assessment can be completed to determine the appropriate ongoing HHS hours for this activity.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department improperly reduced the Appellant's HHS payments for transferring.

IT IS THEREFORE ORDERED THAT:

The Department's decision is PARTIALLY REVERSED. The Appellant's HHS hours for transferring shall be returned to 20 minutes per day effective [REDACTED]. The Department shall also complete a new assessment to determine the appropriate ongoing HHS hours for wound care and transferring.

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

cc:

[REDACTED]

Date Mailed: 6/17/2011

***** 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 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.