

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
BENEFIT SERVICES DIVISION**

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IN THE MATTER OF:

██████████,

Appellant.

_____ /

Docket No. 2011-27466 HHS
Case No. 74076719

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ), pursuant to M.C.L. § 400.9 and 42 C.F.R. § 431.200 *et seq.*, upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. ██████████, Appellant's care provider, appeared and testified on Appellant's behalf. ██████████, Appeals Review Officer, represented the Department of Community Health. ██████████, Adult Services Supervisor, and ██████████, Adult Services Worker (ASW), from the ██████████ County DHS-██████████ Office appeared as witnesses 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 an ██████ year-old Medicaid beneficiary. (Exhibit 1, page 14).
2. Appellant has been diagnosed by a physician with depression, high blood pressure, dementia, congestive heart failure, and arthritis. (Exhibit 1, page 111).
3. Appellant has been receiving HHS for assistance with bathing, grooming, dressing, toileting, eating, transferring, mobility, taking medication, laundry, shopping, housework, and meal preparation. The total care cost of Appellant's HHS was \$710.93 per month. (Exhibit 1, pages 8, 10; Testimony of ASW ██████████).

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4. On [REDACTED], ASW [REDACTED] conducted a home visit with Appellant. Only the two of them were present. (Testimony of [REDACTED]).
5. Based on her assessment and information provided by Appellant during that home visit, ASW [REDACTED] decided to reduce the HHS hours authorized for assistance with transferring, mobility, laundry, and shopping. The times for assistance with other tasks would remain the same. (Exhibit 1, pages 4-7, 9; Testimony of ASW [REDACTED]).
6. Following the reduction, the total care cost for Appellant's HHS was \$623.79 per month. (Exhibit 1, page 9).
7. On [REDACTED], the Department issued an Advance Negative Action Notice to Appellant indicating that her HHS payments would be reduced to \$623.79. The effective date of the reduction was identified as [REDACTED]. (Exhibit 1, pages 6-9).
8. On [REDACTED], the Department received Appellant's Request for Hearing. (Exhibit 1, pages 2-3).

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 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)

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)

On [REDACTED], ASW [REDACTED] completed a home visit and an HHS comprehensive assessment in accordance with Department policy. Following that assessment, the ASW reduced the HHS times authorized for assistance with transferring, mobility, laundry, and shopping. Appellant disputes those reductions. The specific disputed assistance will be addressed in turn and, for the reasons discussed below, this Administrative Law Judge finds that the Department's decisions must be affirmed.

Transferring and Mobility

With respect to the tasks of transferring and mobility, ASW [REDACTED] testified that she observed Appellant get up from a chair and move around the apartment without any difficulty or assistance. (Testimony of ASW [REDACTED]). ASW [REDACTED] also testified that Appellant told her that Appellant only sometimes needed assistance with transferring and mobility. (Testimony of ASW [REDACTED]).

Accordingly, ASW [REDACTED] reduced the times for assistance for those tasks. (Testimony of ASW [REDACTED]). Transferring assistance was reduced from 6 minutes a day, 7 days a week, to 6 minutes a day, 3 days a week. (Exhibit 1, page 9; Testimony of ASW [REDACTED]). Mobility assistance was reduced from 14 minutes per day, 7 days a week, to 14 minutes per day, 3 days a week. (Exhibit 1, page 9; Testimony of ASW [REDACTED]).

[REDACTED], on the other hand, testified that Appellant still requires assistance with both transferring and mobility. (Testimony of [REDACTED]). [REDACTED] also testified that, because of Appellant's dementia, Appellant has to be told to use a walker or to seek assistance with transferring and mobility. (Testimony of [REDACTED]). According to [REDACTED], if Appellant does not have such assistance, Appellant will fall a lot. (Testimony of [REDACTED]).

However, [REDACTED] was not present during the home visit and does not dispute that Appellant may have been able to demonstrate an ability to transfer and to move around for ASW [REDACTED]. (Testimony of [REDACTED]). This Administrative Law Judge finds ASW [REDACTED] credible as to what she observed and was told during the home visit. Given that credible testimony, Appellant only requires assistance with transferring and mobility some of the time, and the Department was correct in reducing her HHS for assistance with those tasks. Therefore, the Department's decision with respect to transferring and mobility is sustained.

Laundry

ASW [REDACTED] reduced HHS for assistance with laundry from 14 minutes per day, 5 days a week to 14 minutes a day, 2 day a week. (Exhibit 1, page 9; Testimony of ASW [REDACTED]). According to ASW [REDACTED], she made that change because Appellant informed her that laundry was only done once or twice a week. (Testimony of ASW [REDACTED]). Appellant's representative argues that the reduction was made in error and that, given Appellant's dementia, the Department cannot rely on what Appellant said. (Exhibit 1, page 3).

Once again, this Administrative Law Judge notes that Appellant's representative was not present during the home visit and cannot testify as to what ASW ██████ was told during the home visit. This Administrative Law Judge also notes that ASW ██████ is credible with respect to what she was told during the home visit and that the Department is justified in relying on what Appellant told it. Therefore, based on Appellant's own statements, the Department properly reduced her laundry assistance to 2 days a week.

Shopping

With respect to shopping, ASW ██████ reduced HHS assistance from 25 minutes a day, 2 days a week to 10 minutes a day, 2 day a week. (Exhibit 1, page 9; Testimony of ASW ██████). ASW ██████ also testified that she made the change because Appellant was receiving more than the recommended amount of time for someone with her rank and there was no reason to deviate from the recommended time in this case. (Testimony of ASW ██████). Appellant's representative argued that, given Appellant's dementia, the Department's reliance on Appellant's statements regarding her needs was negligent. (Exhibit 1, page 3).

As defined in the Functional Assessment Definitions and Ranks of Instrumental Activities of Daily Living, "Shopping and Errands" is "Limited to brief, occasional trips in the local area to shop for food, medical necessities and household items required specifically for health and maintenance of the client." ASM 365, page 2 of 2. Appellant was ranked a "4" with respect to shopping (Exhibit 1, page 19) and that ranking provides that Appellant "Requires the assistance with another person for most tasks, e.g. help with major shopping and errands needed, but client can accompany and assist in selection of items. ASW 365, page 2 of 2.

Workers allocate time for tasks 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. ASW 363, page 4 of 24. Using those factors, ASW ██████ allocated the recommended amount of time for assistance for a person ranked a 4 in shopping. Appellant offers no basis for a higher rank or for departing from that recommended time in this case. To the extent that the Department relied on Appellant's own statements in determining her ranking, it was justified in doing so. Appellant has failed to meet her burden of demonstrating by a preponderance of evidence that the Department erred by reducing the time for assistance with shopping and, consequently, that decision 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 reduced Appellant's HHS payments based on the available information. If Appellant's medical condition changes, then she can request an increase in her HHS.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.


Lisa Gigliotti

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

cc:

[REDACTED]

Date Mailed: 11/29/11

***** 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.