

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

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IN THE MATTER OF:

██████████,

Appellant

_____ /

Docket No. 2011-29645 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 ██████████. ██████████, sister, appeared on the Appellant's behalf. ██████████, represented the Department. ██████████, Adult Services Worker, appeared as a witness for the Department.

ISSUE

Did the Department properly deny the requested increase in the Appellant's Home Help Services (HHS) case?

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 ██████ year-old Medicaid beneficiary.
2. The Appellant has a history of multiple medical impairments, including obesity, high blood pressure, leg swelling, depression, arthritis in leg and hip, some incontinence, urinary tract infection, cellulitis on legs, and inability to stand noting she is now bed bound. (Exhibit 1, page 5)
3. The Appellant is ranked as a level 5 for all of her Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADLs) except for respiration and eating. (Exhibit 1, page 7)
4. The Appellant has been approved for Home Help Services (HHS) for assistance with bathing, grooming, dressing, toileting, transferring, mobility, medication, housework, shopping, laundry, meal preparation,

specialized skin care, and range of motion exercises totaling 116 hours and 54 minutes per month with a monthly care cost of ██████████. (Exhibit 1, page 11)

5. On ██████████, the Adult Services Worker (ASW) made a visit to the Appellant's home as part of a six month review of her HHS case. The Appellant's sister indicated that the Appellant needed additional time authorized. (Exhibit 1, page 8)
6. The Appellant's family stated that the Appellant requires someone with her 24/7 to respond to her requests for assistance. The Appellant's family did not indicate that any of the times authorized for the specific ADLs or IADLs was insufficient. (ASW Testimony)
7. Based on the information available at the time of the review, no increase was made to the Appellant's HHS authorization because the HHS program only compensates for hands-on care for specific tasks, not for reminding, guiding, supervision, or standing by waiting to perform a service. (ASW Testimony)
8. On ██████████, the Appellant requested a hearing requesting an increase in her hours of care. (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 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.

In the present case, the Appellant has been approved for Home Help Services (HHS) for assistance with bathing, grooming, dressing, toileting, transferring, mobility, medication, housework, shopping, laundry, meal preparation, specialized skin care, and range of motion exercises totaling 116 hours and 54 minutes per month with a monthly care cost of ██████████. (Exhibit 1, page 11) The ASW completed a home visit as part of a six month review on ██████████. The Appellant's sister indicated that the Appellant needed additional time. The ASW's case notes indicate that the Appellant was already receiving the maximum time for each service. (Exhibit 1, page 8)

The Appellant is ranked at the highest level, 5, for all of her ADLs and IADLs except for respiration and eating. (Exhibit 1, page 7) However, even if she was given the times indicated on the Department's Reasonable Time Schedule for a level 5 for each ADL and IADL, these hours are not maximums allowed for most of the activities. Department policy only specifies maximum times for four tasks: housework, shopping, laundry and meal preparation. Department policy directs that the reasonable time schedule should be used as a guide and when the hours allocated exceed the reasonable time schedule, a rationale must be provided.

The ASW testified that on ██████████, she called the Appellant and reviewed the times and tasks authorized for her HHS case. She stated that the Appellant agreed that the allocations were correct. The ASW further explained that the Appellant's family only requested an increase so that someone could be there 24/7 to respond to the Appellant's requests. The ASW could not grant the requested increase for this reason because the HHS program only compensates for hands-on care for specific tasks, not for reminding, guiding, supervision, or standing by waiting to perform a service. (ASW Testimony)

The Appellant's sister testified that during the ██████████, telephone call, the Appellant forgot to tell the ASW that she had been in the hospital in ██████████. During this hospitalization, the Appellant was diagnosed with COPD and sleep apnea, and is now on oxygen 24 hours per day as well as a breathing treatment twice per day. The Appellant's sister explained that the Appellant utilizes a solid tank for home oxygen therapy, but it can get too hot. Therefore, the Appellant's caregiver has to change the Appellant to portable tanks on the hottest days. The Appellant's sister further testified that the Appellant often asks her caregiver to stay after the authorized hours for the day have been utilized or calls the caregiver later asking her to come back because she needs additional assistance. (Sister Testimony)

After the ██████████ home visit and ██████████, telephone conversation, the ASW properly denied the requested increase in the Appellant's HHS hours based on the information provided to her. Neither the Appellant nor her family indicated the HHS

hours authorized were insufficient for any specific task. The HHS program does not compensate for having a caregiver present in case assistance will be needed.

The Appellant's sister credibly testified that the Appellant needs a lot of care, and it would be more expensive for her to be in a nursing home. During the hearing proceedings, she did address a few specific tasks that require more time to complete with the Appellant than what has been allocated by the ASW. However, this information was not available to the ASW when she reviewed the Appellant's case in [REDACTED] and [REDACTED]. Accordingly, the Department's determination not to grant the increase requested during the [REDACTED] home visit is upheld. The Appellant should discuss the changes to her medications and concerns with any other specific activities with the ASW for determining the Appellant's ongoing HHS authorization.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly denied the requested increase in the Appellant's Home Help Services (HHS) case based on the information available at that time.

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: 7/14/2011

***** 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.