

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

██████████,

Appellant

_____ /

Docket No. 2011-32553 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 ██████████, cousin, appeared on the Appellant's behalf. ██████████, son, appeared as a witness for the Appellant. ██████████ Appeals Review Officer, represented the Department. ██████████, Adult Services Worker, appeared as a witness for the Department.

ISSUE

Did the Department properly assess 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 been diagnosed with cerebrovascular accident (CVA) with left sided hemiparesis, atrial fibrillation, hypertension and prostate cancer. (Exhibit 1, pages 9-10 and 21)
3. The Appellant lives in a home with his wife. (Uncontested)
4. On ██████████, the Department received a DHS-54A Medical Needs form regarding the Appellant. The physician certified that he had a medical need for assistance with shopping, laundry and housework. (Exhibit 1, page 9)
5. On ██████████, the Department received a DHS-54A Medical Needs form regarding the Appellant's wife. The physician indicated diagnoses of diabetes and low back ache and certified that she had a medical need for

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assistance with shopping, laundry and housework. (Exhibit 1, page 11)

6. On [REDACTED], the Department issued a services and payment approval notice to the Appellant. (Exhibit 1, page 6)
7. On [REDACTED], the Department received a message from the Appellant's cousin indicating the Appellant was home from the hospital and requesting a review of services. (Exhibit 1, page 19)
8. On [REDACTED], a DHS Adult Services Worker (ASW) made a visit to the Appellant's home to conduct a review of his Home Help Services case. (Exhibit 1, pages 17-19)
9. On [REDACTED] the Department received a DHS-54A Medical Needs form regarding the Appellant. The physician certified that he had a medical need for assistance with eating, toileting, bathing, grooming, dressing, transferring, mobility, taking medications, meal preparation, shopping, laundry, housework and specialized feeding. (Exhibit 1, page 10)
10. On [REDACTED], the physician provided a letter to the ASW stating the Appellant's wife is receiving care for diabetes, hypercholesterolemia, and low back pain. Her medications were listed and the physician stated that due to her current medical conditions she is unable to care for her husband. (Exhibit 1, page 12)
11. On [REDACTED], the ASW sent a Memo to the physician asking for details regarding the specific personal care tasks and daily chores the Appellant's wife is unable to assist the Appellant with and the medical reason with associated physical or mental limitation that prevents her from completing the task. The physician only indicated that the Appellant's wife was unable to assist with bathing, toileting, and transferring due to low back ache. (Exhibit 1, page 13)
12. On [REDACTED], the Department issued a Services and Approval Notice to the Appellant indicating that his Home Help Services payment would be increased to [REDACTED] starting [REDACTED], to reflect the tasks the Appellant's spouse is medically unable to assist him with based on the ASW's review and the medical information regarding the Appellant's spouse. The new approval was for assistance with bathing, toileting, and transferring. (Exhibit 1, pages 6-8)
13. On [REDACTED], the Appellant filed a Request for Hearing contesting the amount of time authorized for assisting the Appellant. (Exhibit 1, page 4)

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. 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-54A.

- 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;

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- 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*

On ██████████, the Appellant's representative left a message for the ASW indicating that that Appellant was home from the hospital and requesting a review of his Home Help Services. (Exhibit 1, page 19) The ASW completed a home visit on ██████████, as part of a comprehensive assessment of the Appellant's case. (Exhibit 1, pages 17-19) On ██████████, the DHS-54A Medical Needs form was received from the Appellant's physician, certifying a medical need for assistance with many more activities than indicated on the prior DHS-54A Medical Needs form completed on ██████████. (Exhibit 1, pages 9 and 10)

The ASW properly considered the availability and ability of the Appellant's wife to provide care for the Appellant. The Adult Services Glossary defines a responsible relative as a person's spouse or a parent of an unmarried child under age 18. Adult Services Glossary (ASG Glossary) 12-1-2007, Page 5 of 6. The Appellant's wife meets the definition of a responsible relative. Under Department policy, Home Help Services for the Appellant could only be authorized for those services or times which the responsible relative is unavailable or unable to provide. The policy notes that 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 care giving. These disabilities must be documented/verified by a medical professional on the DHS-54A (Medical Needs form). *Adult Services Manual (ASM 363) 9-1-2008, Page 5 of 24.*

The physician had completed a DHS-54A Medical Needs form regarding the Appellants' wife on ██████████, listing diagnoses of diabetes and low back ache and only certifying a medical need for assistance with shopping, laundry and housework. (Exhibit 1, page 11) However, on ██████████, the physician provided a letter to the ASW stating the Appellant's wife is receiving care for diabetes, hypercholesterolemia, and low back pain. Her medications were listed and the physician stated that due to her current medical conditions she is unable to care for her husband. (Exhibit 1, page 12) This letter was not consistent with the previously completed DHS-54A regarding the

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Appellant's wife. Accordingly, the ASW properly sought clarification from the physician.

On [REDACTED], the ASW sent a Memo to the physician asking for details regarding the specific personal care tasks and daily chores the Appellant's wife is unable to assist the Appellant with and the medical reason with associated physical or mental limitation that prevents her from completing the task. The physician only indicated that the Appellant's wife was unable to assist with bathing, toileting, and transferring due to low back ache. (Exhibit 1, page 13)

As a result of the information gathered for the comprehensive assessment, the ASW adjusted the Home Help Services authorization to only include hours for the activities the physician certified the Appellant's wife was unable to assist him with, bathing toileting, and transferring. Hours for other activities were removed based on the physician's indication that the Appellant's wife was able to assist with these activities on the [REDACTED], memo. (Exhibit 1, pages 6-8, 14 and 24-26)

The Appellant's representative and son disagree with the authorization and testified that the Appellant needs more assistance and his wife is not able to care for him. For example they indicated that the Appellant's wife's hands shake preventing her from performing the tube feeding. The Appellant's son also testified that the Appellant's wife's back problems prohibit her from lifting more than ten pounds. The Appellant's representative and son explained that the Appellant is tall and heavy and requires assistance with all activities, including moving, walking, bathing and incontinence care.

The documentation from the physician was inconsistent regarding the Appellant's wife, but it did not support the specific limitations asserted by the Appellant's representative and son. The physician never indicated that the diabetes or any other impairment affects the Appellant's wife's use of her hands. (Exhibit 1, pages 11-13) While low back ache/pain is documented, the physician did not document a ten pound weight limitation. Rather the most recent documentation indicated that the Appellant's wife can assist with grooming, dressing, eating/feeding, mobility, medication, housework, laundry, shopping, and meal preparation. (Exhibit 1, pages 11-13)

The evidence shows that the ASW did have a significant change in his condition and requires much more care and assistance since his stroke and hospitalization. (Exhibit 1, pages 17-18) There was no evidence indicating that the Appellant's wife is unavailable due to employment or other legitimate reasons. Home Help Services policy only allows for hours to be authorized for the activities a physician has certified that his wife is unable to assist him with. The documentation from the physician regarding the Appellant's wife's abilities was not consistent from [REDACTED] to [REDACTED] and there was no evidence of a significant change in her condition to support her no longer being able to care for the Appellant. (Exhibit 1, pages 11-12) The ASW obtained additional information from the physician specifically to clarify the Appellant's wife's ability to care for the Appellant. The physician only indicated the Appellant's wife unable to assist with three activities, bathing, toileting, and transferring, due to low back ache. (Exhibit 1, page 13) Accordingly, the ASW's determination to only authorize Home Help Services for bathing, toileting, and transferring is upheld.

DECISION AND ORDER

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

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:



Date Mailed: 8/12/2011

***** 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.