

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

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IN THE MATTER OF:

██████████,

Appellant

_____ /

Docket No. 2011-34327 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 ██████████, ██████████, caregiver, appeared on the Appellant's behalf. ██████████, the Appellant, appeared and testified. ██████████, Appeals Review Officer, represented the Department. ██████████, Adult Services Supervisor, and ██████████ Adult Services Worker, appeared as witnesses 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 had a serious injury to her left hand and wrist requiring surgical repair. (Exhibit 1, pages 15-16, Appellant Testimony)
3. The Appellant is right handed. (Appellant Testimony)
4. The Appellant lives in a home with three of her children, who are under age 16. (Exhibit 1, pages 12 and 14)
5. On ██████████, an Adult Services Worker (ASW) made a visit to the Appellant's home to conduct a Home Help Services assessment. The Appellant's caregiver was also present. (Exhibit 1, pages 12-13)
6. On ██████████, the Department issued a services and payment

approval notice to the Appellant indicating Home Help Services were authorized for [REDACTED] per month effective [REDACTED]. (Exhibit 1, pages 8-9)

7. The Department authorized a total of 21 hours and 8 minutes of Home Help Services per month for assistance with Medication, housework, laundry, shopping and meal preparation. (Exhibit 1, page 18)
8. On [REDACTED], a hearing request contesting the amount of Home Help Services was submitted on the Appellant's behalf. On [REDACTED], the request for hearing was re-submitted with the Appellant's signature. (Exhibit 1, pages 4-7)

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;
- 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*

The Adult Services Worker (ASW) completed a home visit as part of a comprehensive assessment on ██████████. The Appellant and her caregiver were present. The ASW noted the bandage on the Appellant's left hand and that the Appellant is right handed. The Appellant reported being able to take a shower and dress herself using her right hand, but needing assistance with taking her medications, cooking, housework, laundry, and shopping. The ASW also noted that three of the Appellant's children live with her, all under age 16. (Exhibit 1, pages 12-13) The ASW testified that the HHS hours for housework, shopping, laundry, and meal preparation were prorated for the shared household in accordance with the Department's policy, because at least one of the Appellant's daughters is a teenager. The ASW also explained that the Home Help Services program does not cover childcare, transportation, or 24 hour a day care. (ASW Testimony)

As a result of the assessment, the ASW ranked the Appellant as a level 2 for bathing, grooming, and dressing; a level 1 for toileting, transferring, continence, eating, respiration, and mobility; and a level 3 for medication, housework, laundry, shopping,

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and meal preparation. (Exhibit 1, page 16) The ASW authorized a total of 21 hours and 8 minutes of Home Help Services per month for assistance with medication, housework, laundry, shopping and meal preparation with a monthly care cost of [REDACTED]. (Exhibit 1, page 18)

The Appellant and her caregiver disagree with the amount of assistance authorized. The Appellant's caregiver testified that at the time the ASW completed the home visit, she was told that the Appellant's hand did not function. He described the injury to the Appellant's hand, which required reconstruction and nerve grafting. The Appellant's caregiver also explained that the Appellant is taking heavy medications for the intense pain, which make her delirious, delusional and groggy. (Caregiver Testimony)

The Appellant's caregiver indicated that the Appellant's children were ages 9, 13, and 16, at the time of the home visit. He indicated they can not assist the Appellant because they attend school and have homework. (Caregiver Testimony) The Appellant testified that her children are also involved in school teams, including cheerleading and volleyball. (Appellant Testimony) The Appellant's caregiver further testified that a nurse and plastic surgeon trained him on how to change the dressings and put the Appellant's brace on. He stated that the Appellant's children have not been trained on how to change the dressings on the Appellant's hand. (Caregiver Testimony)

The Appellant's caregiver asserted that the Appellant still does not have function in that hand, including grooming herself, washing herself, cooking, and cleaning. (Caregiver Testimony) The Appellant indicated she is not able to dress herself, for example she can not put a bra on. The Appellant testified that she is still in physical and occupational therapy. (Appellant Testimony) The Appellant's caregiver testified that he also told the ASW he takes the Appellant to her appointments. He also indicated that the Appellant has another surgery coming up due to the pain she is still having. (Caregiver Testimony)

The HHS program does not cover all the types of assistance the Appellant's caregiver may be providing, such as transportation to medical appointments. The policy implemented by the Department also recognizes that in most cases, certain tasks are performed that benefit all members who reside in the home together, such as cleaning, laundry, shopping and meal preparation. Normally, it is appropriate to pro-rate the payment for those tasks in a shared household, as the Appellant's family members would have to clean their own home, make meals, shop and do laundry for themselves if they did not reside with the Appellant. Accordingly, the authorized hours for these activities must be prorated under Department policy.

While the ASW properly considered the Appellant's ability to participate in the ADL's and IADL's with her right arm/hand, the evidence indicates that the ASW did not properly assess some of the activities covered under the HHS program. For example, the Appellant and her caregiver's testimony indicated the Appellant needs some hands on assistance with putting on a bra and the brace for her wrist/hand. The Functional Assessment definitions and rankings for dressing indicate this activity includes "putting on and taking off, fastening and unfastening garments and undergarments, special

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devices such as back or leg braces, corsets, elastic stockings/garments, and artificial limbs or splints.” *Adult Services Manual (ASM) 365, October 1, 1999, Page 1 of 2* Additionally, the ASW did not address wound care during the assessment, despite noting that the Appellant’s left hand was bandaged. The Appellant’s caregiver testified that he has been trained to change the Appellant’s dressings. A new assessment is needed to obtain more detailed information regarding Appellant’s needs for assistance with wound care and other activities she can not complete independently.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED THAT:

The Department’s decision is REVERSED. The Department shall complete a new assessment to obtain more detailed information regarding Appellant’s needs for assistance with wound care and other activities she can not complete independently. Increases in the HHS authorization should be made retroactive to the [REDACTED], effective date when appropriate.

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

cc:



Date Mailed: 11/4/2011

***** 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.