STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH
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IN THE MATTER OF:

[redacted]

Appellant
_____/

Docket No. 2011-3958 HHS
Case No. 29851431

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.,* following the Appellant's request for a hearing.

After due notice, a hearing was held on [redacted]. The Appellant was present for the hearing and represented himself. His [redacted], appeared as the Appellant's witness. [redacted] represented the Department of Community Health (Department). [redacted], testified as the Department's witness.[1]

ISSUE

Did the Department properly determine the Appellant's monthly Home Help Services (HHS) payment?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Appellant is a Medicaid recipient, who was determined eligible for HHS.

2. The Appellant has been diagnosed with diabetes, sleep apnea, and an old stabbing/gunshot wound. (Exhibit 1, page 13; Testimony of [redacted])

3. During an initial HHS assessment on [redacted], the worker determined that the Appellant needs assistance with grooming, housework, and meal preparation. (Exhibit 1, page 12)

[1] The Adult Services Worker (worker), [redacted], was not present for the hearing because she has retired from the Department. (Testimony of [redacted])

4. The worker ranked the Appellant at a level 3 for grooming, housework, and meal preparation. (Exhibit 1, page 14)

5. On [redacted], the Department sent the Appellant a Services and Payment Approval Notice, approving a monthly HHS payment of $[redacted], effective [redacted]. (Exhibit 1, pages 5-8)

6. On [redacted], the State Office of Administrative Hearings and Rules received a hearing request from the Appellant, protesting the Department's determination of the amount of the Appellant's monthly HHS payment and requesting retroactive payment. (Exhibit 1, page 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 Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

The purpose of HHS is to enable functionally limited individuals to live independently and receive care in the least restrictive, preferred settings. These activities must be certified by a health professional and may be provided by individuals or by private or public agencies.

Necessity For Service

The adult services worker is responsible for determining the necessity and level of need for HHS based on:

- Customer choice.

- A complete comprehensive assessment and determination of the customer's need for personal care services.

- Verification of the customer's medical need by a Medicaid enrolled medical professional. The customer is responsible for obtaining the medical certification of need. The Medicaid provider identification number must be entered on the form by the medical provider.

* * *

Do **not** authorize HHS prior to the date of the medical professional signature on the FIA-54A.

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.

Adult Services Manual (ASM 363 9-1-2008), pages 14-15 of 24

The Adult Services Manual also explains the initial comprehensive assessment process as follows:

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.

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).

Adult Services Manual (ASM 363 9-1-2008), pages 2-5 of 24

After the initial assessment on [redacted], the worker determined that the Appellant needs assistance with the following tasks: grooming, housework, and meal preparation. (Exhibit 1, page 12) Using the functional scale, the worker ranked the Appellant at a level 3 for those tasks. (Exhibit 1, page 14) On [redacted], the worker approved payment for 11 hours and 40 minutes, or $[redacted], per month for the Appellant. That payment was made retroactive to [redacted], just a few days after the Appellant's provider enrolled with the Department.

In his hearing request, the Appellant requested retroactive payment for services his chore provider provided him before the DHS building was closed in [redacted] due to flooding. It was explained to him at the hearing that he was, in fact, approved for retroactive payment back to [redacted], thereby satisfying his request.

The Appellant also challenged the amount of his monthly HHS payments. He stated that he is unhappy with the amount of the payment because it is not consistent with the amount of services his chore provider actually provides. His [redacted] explained that she does much more for the Appellant than just grooming, housework, and meal preparation. She testified that the stabbing/gun shot wound resulted in the Appellant's left arm being non-functional. She further explained that the Appellant weighs [redacted] pounds and does not have the strength to do many of the tasks for himself with one arm. She stated that in addition to the tasks that have been approved—grooming, housework, and meal preparation—she also assists the Appellant with bathing, laundry, and medications. She further testified that she attempted to explain this information to the worker. However, the worker was very unprofessional and would not let her explain what services she provided to the Appellant.

The worker's narrative notes do support that the Appellant did, in fact, notify her that he needed assistance with the tasks of bathing, dressing, grooming, housework, laundry, shopping, and meal preparation. Unfortunately, the worker's notes do not provide any reason for determining that these services were not warranted, and the Department's witness was unable to speak to the Appellant's actual need for services.

Accordingly, because the Department was unable to explain its reason for denying services that the Appellant had requested, its decision cannot be upheld.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department did not properly determine the Appellant's HHS payment amount.

IT IS THEREFORE ORDERED that:

The Department's action is REVERSED. The Department is ordered to conduct a new comprehensive assessment of the Appellant's assistance needs. And any payment adjustment is to be made retroactive to [redacted].

Kristin M. Heyse
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc: [redacted]

Date Mailed: 1/18/2011

***** NOTICE *****

The State Office of Administrative Hearings and Rules 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 State Office of Administrative Hearings and Rules 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.