

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

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IN THE MATTER OF:

██████████,

Appellant

_____ /

Docket No. 2011-52481 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 ██████████, the Appellant, appeared on her own behalf. ██████████, Appeals Review Officer, represented the Department. ██████████, Adult Services Worker (ASW), and ██████████, Acting Supervisor, appeared as witnesses for the Department.

ISSUE

Did the Department properly reduce the 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. The Appellant is a ██████ year-old Medicaid beneficiary.
2. The Appellant has been diagnosed with Crohn's disease. (Exhibit 1, page 15; Exhibit 2, page 2)
3. The Appellant had been receiving a total of 50 hours and 45 minutes of Home Help Services per month with a monthly care cost of ██████████ (Exhibit 1, pages 12-13; Exhibit 2, page 4)
4. On ██████████, the ASW made a visit to the Appellant's home to conduct a Home Help Services assessment. (Exhibit 1, page 10-11)
5. The Appellant lives with her daughter, who was ██████ years old at the time of the ██████████, home visit. (Exhibit 1, page 10)

6. As a result of the information gathered, the ASW determined that the Appellant's HHS hours should be reduced. The ASW eliminated the HHS hours authorized for grooming and medication, and reduced the HHS hours authorized for bathing, housework, shopping, and meal preparation. (Exhibit 2, pages 3-4)
7. On ██████████, the Appellant called the ASW with concerns regarding the ASW's assessment, including assistance with medications and grooming. (Exhibit 1, pages 8-10)
8. On ██████████, the Department sent an Advance Negative Action Notice to the Appellant indicating that her HHS case would be reduced to ██████████ per month effective ██████████, based on the information obtained and reflecting proration of the HHS hours for housekeeping, shopping and meal preparation based on the shared household. (Exhibit 1, pages 4-6)
9. On ██████████, the Appellant requested the HHS hours for medication and grooming be reinstated during telephone conversations with the ASW and her supervisor. (Exhibit 1, pages 7-8)
10. On ██████████, the Appellant's Request for Hearing was received. (Exhibit 2, page 5)

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), addresses the comprehensive assessment, functional assessment, time and task authorization, service plan development, necessity for services, and services not covered:

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).

Necessity For Service

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

- Client choice.
- A complete comprehensive assessment and determination of the client's need for personal care services.
- Verification of the client's medical need by a Medicaid enrolled medical professional. The client is responsible for obtaining the medical certification of need. The Medicaid provider identification number must be entered on the form by the medical provider. The Medical Needs form must be signed and dated by one of the following medical professionals:
 - Physician.
 - Nurse practitioner.
 - Occupational therapist.
 - Physical therapist.

Exception: DCH will accept a DHS-54A completed by a VA physician or the VA medical form in lieu of the medical needs form.

The medical professional certifies that the client's need for service is related to an existing medical condition. The medical professional does not prescribe or authorize personal care services.

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 ASW completed a home visit as part of a comprehensive assessment on ██████████. Based on the Appellant's statements and the ASW's observations during the home visit, the ASW determined that the Appellant's HHS authorized should be reduced. The HHS hours for grooming and medication were eliminated, the HHS hours for bathing, housework, shopping and meal preparation were reduced. (Exhibit 1, pages 10-11 and 13; Exhibit 2, pages 3-4)

Medication

The ASW testified she eliminated the HHS hours for medication because the Appellant stated she could take her medications by herself, but her provider reminds her to take them. (ASW Testimony)

The Appellant submitted a note from her doctor indicating she takes several medications with variable dosages, thus, she needs assistance managing her medications. (Exhibit 2, page 2) However, the Appellant testified that she takes the same dosages of her medications each day. The Appellant explained that the dosage would decrease if she were in remission, at which time the doctor would order the change. The Appellant is concerned about overdosing because the pills look the same and cause drowsiness, but she testified that she can read the medication bottles and open them herself. (Appellant Testimony)

The Appellant's physician certified a medical need for assistance with taking medications on the DHS-54A Medical Needs form and in his [REDACTED], note. (Exhibit 2, pages 1-2) The above cited policy clarifies that the medical professional certifies the need for service is related to an existing medical condition, but does not prescribe or authorize personal care services. Rather the assessment and resulting functional ranking determine time and task authorizations. In this case, there is not sufficient evidence of a need for direct physical, or hands on, assistance with medication. The Appellant testified that she takes the same dosages of her medications each day, she can read the medication containers and open them herself. The HHS program does not compensate for assistance at the level of supervision, reminding, or prompting. The elimination of HHS hours for medication assistance is sustained.

Grooming

The ASW testified she eliminated the HHS hours for grooming because during the home visit, the Appellant stated she had just finished doing her daughters hair. The ASW stated she did not observe the Appellant having any physical difficulties, rather the Appellant was able to walk unassisted as well as bend and squat to make copies. (ASW Testimony)

The Appellant testified she did not recall saying she did her daughter's hair during the home visit. The Appellant stated that the Crohn's disease does not allow her to complete a task. She testified she has pain 24 hours a day and bad stomach cramps, which can worsen even just sitting down. The Appellant stated sometimes she needs help brushing her teeth or washing her face. The Appellant testified she sometimes has problems with her hands getting numb and not being able to use them. (Appellant Testimony)

The Appellant had been authorized for daily assistance with grooming. (Exhibit 1, page 13; Exhibit 2, page 4) The Appellant's testimony indicates she only occasionally needs assistance with this activity. Further, the DHS 54-A Medical Needs form only lists a diagnosis of Crohn's disease. There is no documentation of any other diagnoses or any complication of Crohn's disease relating to an impairment of the Appellant's hands. (Exhibit 2, page 1) The elimination of HHS hours for grooming is sustained based on the available information. The Appellant may wish to provide the ASW with any medical

documentation of the impairment with her hands, or other more specific documentation of a need for hands on assistance with grooming for consideration in assessing her ongoing HHS authorization.

Bathing

The ASW testified she reduced the HHS authorization for bathing because during the home visit, the Appellant stated she needed help getting in/out of the tub but was able to wash herself. (ASW Testimony) The Appellant's testimony confirmed that she only needs help in/out of the tub. (Appellant Testimony) The HHS hours should only compensate for the portion of the activity the Appellant needs assistance with. The reduction to 10 minutes of assistance 7 days per week is appropriate for the Appellant's needs with this activity. The reduction to the HHS hours for bathing is sustained.

Housework, Shopping, and Meal Preparation

The ASW testified the HHS authorization for these activities was made to bring the Appellant's case into compliance with the policy for proration in shared households. The ASW's testimony indicated she thought she saw someone in the back room during the home visit. (ASW Testimony) There was no evidence that the ASW confirmed that anyone but the Appellant's daughter lived in the home with the Appellant.

The policy implemented by the Department 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 others 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 are to be prorated under Department policy.

The reduced authorization reflects an authorization of half the maximums HHS hours that can be authorized for housework, shopping, laundry and meal preparation. (Exhibit 2, page 3 and Adult Services Manual (ASM) 363, 9-1-2008, Pages 19-20 of 24.) While the HHS policy includes language in one of the bullet points stating that HHS is only to be authorized for the benefit of the client and not for others in the home and that the IADL's are to be prorated by at least half if others are living in the home, the first sentence of that starts that bullet point indicates that ASW's should consider "the extent to which others in the home are able and available to provide the needed services." A previous bullet point also states "authorize HHS only for those services or times which the responsible relative/legal dependant is unavailable or unable to provide." Adult Services Manual (ASM) 363, 9-1-2008, Page 5-15 of 24. The case documentation indicates that Appellant's daughter was █ years old at the time of the home visit and was unable to contribute towards the Appellant's care. (Exhibit 1, pages 10 and 14) While she was a legal dependant, she was only █ years old and there is no evidence that she was able to perform the IADLs. The reduction of HHS hours for housework,

shopping, and meal preparation based on a shared household, where the other person living in the home is only [REDACTED] years old, is reversed.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly reduced the Appellant's HHS authorization for the activities of bathing, medication and grooming, but not for the activities of housework, shopping, and meal preparation.

IT IS THEREFORE ORDERED THAT:

The Department's decision is PARTIALLY AFFIRMED AND REVERSED. The elimination of HHS hours for medication and grooming and the reduction to the HHS hours for bathing is upheld. The Department shall reinstate the HHS hours previously authorized for housework (6 hours and 1 minute per month), shopping (3 hours and 35 minutes per month), and meal preparation (25 hours and 5 minutes per month).

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

cc:

[REDACTED]

Date Mailed: 12/1/2011

***** 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.