

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF:

Docket No. 2011-8820 HHS
Case No. 42453556

██████████
Appellant
_____ /

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 ██████████. ██████████ and Guardian, appeared on the Appellant's behalf. ██████████ appeared and testified. ██████████ represented the Department. ██████████

██████████; ██████████; ██████████, and ██████████, 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 ██████████ Medicaid beneficiary.
2. The Appellant has been diagnosed with progressive spastic paraplegia, seizure disorder, Wolf Parkinson's White, pace maker, and pulmonary embolism hypercoagulable state. (Exhibit 1, pages 10, 12 and 19-20)
3. The Appellant's ██████████ is her HHS chore provider. (Uncontested)
4. The Appellant received Home Help Services (HHS) with a care cost of \$██████████ per month from ██████████ through ██████████. (Exhibit 3, page 2)
5. On ██████████, the Appellant's HHS case was received in the Department of Community Health (DCH) central office for approval of Expanded Home Help Services totaling 179.01 hours at a monthly care

cost of \$ [REDACTED]. (Exhibit 1, pages 12-13 and Exhibit 3, page 3)

6. An RN in the central DCH office reviewed the information provided by the Adult Services Worker and the Supervisor assigned to the Appellant's case at that time.
7. The RN recommended a total of 140.19 hours of HHS with a monthly care cost of \$ [REDACTED]. (Exhibit 1, page 3)
8. On [REDACTED], the Adult Services Worker issued an Advance Negative Action Notice to the Appellant indicating that her Home Help Services payments would be reduced effective [REDACTED], but did not indicate the new authorized dollar amount. (Exhibit 1, pages 22-24)
9. On [REDACTED], the State Office of Administrative Hearings and Rules received the Request for Hearing filed on the Appellant's behalf. The hearing request was resubmitted with the documentation of Guardianship on [REDACTED]. (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 2-5 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.

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.
- 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*

Considering the periodic provider pay rate increases, the evidence indicates that the Appellant's case was approved for about 219 hours and 43 minutes of Home Help Services (HHS) from at least [REDACTED] through [REDACTED]. This equated to a monthly care cost of about \$ [REDACTED] from [REDACTED] through [REDACTED] as the provider pay rate was \$ [REDACTED] per hour during this time. Effective [REDACTED], the provider pay rate increased to \$ [REDACTED] per hour and the Appellant's monthly care cost was authorized for \$ [REDACTED] per month through [REDACTED]. (Exhibit 1, page 5 and Exhibit 3, pages 1-2) The care cost effective was reduced to \$ [REDACTED] per month [REDACTED]. (Exhibit 3, page 2) No evidence was presented of the time and task authorization of HHS hours related to this payment. It appears that the Department did send the Appellant notice of this reduction on [REDACTED], but this notice could not have met the advance notice requirements found in the Code of Federal Regulations, 42 CFR § 431.211 – 431.214. However, this is not the Department action contested in the present case.

The present appeal was filed in response to the [REDACTED], Advance Negative Action Notice indicating a further reduction would be made to the Appellant's HHS case effective [REDACTED], but the notice does not indicate the new proposed dollar amount authorized. (Exhibit 1, page 22) The payment history shows that Appellant's

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HHS care cost was reduced to \$ ██████████ effective ██████████. (Exhibit 3, page 2) This reduction was the result of a request for central office approval for Expanded Home Help Services that resulted in an authorization for 140 hours and 19 minutes of HHS each month. (Exhibit 1, page 3) The Appellant's ██████████ disagrees with the HHS hours as authorized in this current time and task assignment and contests that the Appellant's HHS payments did not continue pending this Hearing Decision.

The Hearing Rights page from the Department's Advance Negative Action Notice states:

You will continue to receive the affected services until the hearing decision is rendered **if** your request for a fair hearing is received prior to the effective date of action.

If you continue to receive benefits because you requested a fair hearing, you may be required to repay the benefits. This may occur if:

- The proposed termination or denial of benefits is upheld in the hearing decision.
- You withdraw your hearing request.
- You or the person you asked to represent you does not attend the hearing.

Reference Forms & Publications Manual,
State of Michigan Department of Human Services) Page 4 of 5
(RFF 1212) DHS-1212, Advance Negative Action Notice 6-1-2007

In the present case, the Appellant did file the hearing request prior to the ██████████, effective date indicated on the Advance Negative Action Notice. (Exhibit 1, page 2) Accordingly, the HHS payments should have continued pending this hearing decision. However, a new monthly HHS payment will result from this Hearing Decision and will be made retroactive to the ██████████, effective date.

The evidence indicates that on ██████████, a supervisor completed a home visit as part of a comprehensive review of the Appellant's HHS case. (Exhibit 1, page 22) The Appellant's case was sent for central office approval of Expanded Home Help Services in ██████████ for 179 hours and 1 minute of HHS with a monthly care cost of \$ ██████████. (Exhibit 1, pages 12-13; Exhibit 3, page 3) In response to a request for additional information, a second time and task assignment was submitted showing a total of 198 hours and 39 minutes of HHS with a monthly care cost of \$ ██████████. (Exhibit 1, page 4) An RN reviewed the request for Expanded HHS for the Appellant and made recommendations based on the information received from the Adult Services Worker and Supervisor assigned to the Appellant's case at that time. (RN Testimony) It is noted that both the Adult Services Worker and Supervisor that were involved in this action could not participate in the hearing proceedings as they have both retired. (Adult

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Services Supervisor Testimony)

Bathing

The RN recommended an authorization of 22 minutes per day (11 hours and 2 minutes per month) for bathing. (Exhibit 1, page 3) This was the time requested by the Adult Services Worker on both of the time and task assessments sent in for central office review. (Exhibit 1, page 4 and Exhibit 3, page 3) The Appellant is ranked as a level 5 for this activity. (Exhibit 1, page 26) The authorized 11 hours per month for bathing corresponds with the Department's Reasonable Time allotment for bathing for an individual ranked as a level 5. (Exhibit 1, page 6)

The Appellant's ██████████ noted that the Appellant was authorized for 50 minutes per day for many years and explained that 22 minutes per day is not sufficient for bathing. She stated that the Appellant is bathed every other day and that it takes about 1 hour and 10 minutes to 1 hour and 20 minutes to complete this activity, which in part is due to the Appellant having very long hair. On the non-bath days, the Appellant is washed up twice per day, which takes about 20 minutes each time. (██████████ Testimony) The evidence does show that the prior HHS authorization at 219 hours and 43 minutes per month, which was in place for many years, included 50 minutes per day (25 hours and 5 minutes per month) for bathing. (Exhibit 1, page 5)

The RN noted that some of the extra time needed because of the Appellant's long hair may be considered part of grooming, rather than bathing. It is noted that the Appellant is also ranked at a level 5 for grooming and HHS hours have been authorized for 7 hours and 1 minute per month for this activity, which is in excess of the Reasonable Time Schedule allotment of 6 hours for an individual ranked at this level. (Exhibit 1, pages 3, 6, and 26)

The 50 minutes per day (25 hours and 5 minutes per month) was a more appropriate allowance for bathing in the Appellant's case. The need for additional time beyond the Reasonable Time Schedule allowance to complete bathing is understandable given the Appellant's impairments. This time accounts for the fluctuation every other day between completing a full bath or the twice daily washing up. The Appellant's HHS hours for bathing shall be adjusted to 50 minutes per day.

Grooming, Dressing Toileting, Transferring, and Eating

No changes were made to the HHS hours authorized for these activities. (Exhibit 1, pages 3-5 and Exhibit 3, page 3) The Appellant's ██████████ did not contest the HHS hours assigned for these tasks. (██████████ Testimony) The HHS hours authorized for grooming, dressing, toileting, transferring and eating shall remain the same.

Medication

While no changes were made to the HHS hours authorized for medication assistance, the Appellant's ██████████ testified that 4 minutes per day (2 hours per month) is not sufficient to complete this activity. (Exhibit 1, pages 3-5; Exhibit 3, page 3; ██████████

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Testimony) It is noted that the Appellant is ranked as a level 4 for medication, but the authorized 2 hours per month for this activity corresponds for an individual ranked as a level 3 on the Reasonable Time Schedule. (Exhibit 1, pages 6 and 26)

The Appellant's ██████████ explained that the information provided by the Adult Services Worker on the Home Help Services Complex Care Worksheet regarding respiratory treatment incorrectly indicates that the Appellant does not receive any. (Exhibit 1, page 16) It appears more accurate information was provided on the DHS 324 Adult Services Assessment form regarding medications as a nebulizer treatment is included. This medication listing includes many medications, several of which are taken three or four times per day. (Exhibit 1, page 11) Given the number of medications and frequency of administration, the Appellant's HHS hours for medication shall be increased to 4 hours per day.

Housework, Shopping, Laundry and Meal Preparation

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 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. The HHS program will not compensate for tasks that benefit other members of a shared household. Accordingly, the authorized hours for these activities must be prorated under Department policy. Exceptions can be made when there is justification for performing an activity separately, such as incontinence. In this case, the Department did not prorate laundry and allowed some additional time added for shopping and meal preparation based on the Appellant's needs. (Exhibit 1, page 3) This corresponds with the information provided in the Adult Services Worker's letter requesting the Expanded Home Help Services approval. (Exhibit 1, pages 12-13)

Department policy allows for a maximum of 6 hours per month for housework, 5 hours per month for shopping, 7 hours per month for laundry and 25 hours per month for meal preparation. In the present case, the Department ranked the Appellant at level 5 for each of these activities, indicating she is dependant on others and needs the maximum level of assistance. After proration for the shared household, the Department authorized 3 hours and 1 minute per month for housework, 7 hours and 1 minute per month for laundry, 2 hours and 52 minutes per month for shopping, and 15 hours and 3 minutes per month for meal preparation. (Exhibit 1, page 3) While the Appellant's ██████████ disagrees with the overall reduction to the Appellant's HHS hours, she stated that she understood the proration policy. (██████████ Testimony) The authorized hours are reflective of the Appellant's household composition, ranking and needs for these activities. The HHS hours authorized for housework, shopping, laundry, and meal preparation shall remain the same.

Range of Motion

The RN recommended an authorization of 1 hour and 20 minutes per day (40 hours and 8 minutes per month) for range of motion. (Exhibit 1, page 3) This was in accordance with the first time and task assignments sent to the RN for the central office review. (Exhibit 3, page 3) The RN testified this was also based on the medical documentation available at the time of review. Specifically, a DHS 54A Medical Needs form stating 15 minutes, 3-4 times per day for range of motion and 10 minutes twice per day for back massage. (Exhibit 1, page 19)

The Appellant's ██████████ testified that this was not accurate, and the previously authorized 3 hours per day was correct. She explained that range of motion exercises have been done for 1 hour 3 times per day for many years, and is needed to help the Appellant loosen up and be safe for transferring and mobility. She also submitted an amended copy of the DHS 54A Medical Needs form from the doctor and a prescription from a different doctor regarding the Appellant's needs for range of motion. (Exhibit 1, page 20 and Exhibit 2) However this information was submitted with the hearing request and was not available to the Department at the time this action was taken. Accordingly, the HHS hours for range of motion were appropriately authorized at 1 hour and 20 minutes per day based on the available information. The Department should consider the additional documentation when reviewing the Appellant's case and determining future HHS authorizations.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department did not properly reduce the Appellant's HHS payments based on the available information. The HHS hours authorized in the areas of bathing and medication were not properly assessed.

IT IS THEREFORE ORDERED THAT:

The Department's decision is PARTIALLY REVERSED. The HHS hours for bathing shall be adjusted to 25 hours and 5 minutes per month. The HHS hours for medication shall be adjusted to 4 hours per month. Further, these adjustments to the Appellant's HHS case shall be made retroactive to ██████████, the effective date from the ██████████, Advance Action Notice.

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

[REDACTED]
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cc:

[REDACTED]

Date Mailed: 3/18/2011

***** NOTICE *****

The State Office of Administrative Hearings and Rules March 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 March 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.