

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

P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 334-9505

IN THE MATTER OF:

Docket No. 2011-13011 HHS
Case No. 32000726

██████████

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 ██████████, ██████████, appeared on the Appellant's behalf. ██████████, 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 cerebral palsy, bed sores, mild mental retardation, severe curvature of spine, and legal blindness. (Exhibit 1, pages 10 and 13)
3. The Appellant's Guardian is her HHS chore provider. (Exhibit 1, pages 4-5)
4. The Appellant had been receiving 181 hours and 6 minutes of Home Help Services (HHS) with a care cost of \$ ██████████ per month. (Exhibit 1, page 4)
5. On ██████████, the ASW sent the Appellant's case to the Department of Community Health (DCH) central office for approval of Expanded Home Help Services totaling 181 hours and 6 minutes with a monthly care cost of

\$██████████. (Exhibit 1, page 3)

6. An RN in the central DCH office reviewed the information provided by the Adult Services Worker and recommended some changes to the time and task authorizations. (██████████ Testimony and Exhibit 1, pages 9)
7. The ASW revised the time and task, reducing the HHS hours authorized for eating, housework, laundry, shopping, meal preparation and range of motion. This resulted in a total of 144 hours and 1 minute of Home Help Services with a monthly care cost of \$██████████. (Exhibit 1, page 5)
8. On ██████████, the Adult Services Worker issued an Advance Negative Action Notice to the Appellant indicating that her Home Help Services payments would be reduced effective ██████████. (Exhibit 2)
9. On ██████████, 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 ██████████. (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*

In ██████████, the Appellant's HHS case was sent for central office review requesting approval of Expanded Home Help Services totaling 181 hours and 6 minutes with a monthly care cost of \$██████████. (Exhibit 1, pages 3-4) After receiving recommendations from the RN, the ASW made reductions to the HHS hours authorized for eating, housework, shopping, laundry, meal preparation and range of motion. The Appellant's Guardian disagrees with the reductions.

Eating

The HHS hours for eating assistance were reduced from 27 hours and 35 minutes per month (55 minutes per day) to 22 hours and 4 minutes per month (44 minutes per day). (Exhibit 1, pages 4-5) The Appellant is ranked as a level 3 for this activity. (Exhibit 1, page 16) This ranking is appropriate based on the Guardian's testimony that once foods have been cut up, the Appellant can feed herself most foods and can use a cup with a handle to drink. The Appellant's Guardian only needs to feed the Appellant some items, and also stays nearby to monitor eating and watch closely for choking. (Guardian Testimony) The reduced authorization of 22 hours and 4 minutes per month for eating corresponds with the Department's Reasonable Time allotment for this activity for an individual ranked as a level 3. (Exhibit 1, page 6) The reduction to the HHS hours for eating is sustained as this is reflective of the Appellant's ranking and need for

assistance with this activity.

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. The Appellant's Guardian explained that the Appellant has very loose intense bowel movements, has problems with her catheter plugging up, drools with eating resulting in having her clothing changed after every meal, and her bed is stripped and disinfected daily. (Guardian Testimony) In this case, the Department allowed some additional time for laundry based on the Appellant's needs. (ASW Testimony)

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. (Exhibit 1, page 16) After proration for a household of 3 persons, the Department authorized 3 hours and 1 minute per month for housework, 5 hours per month for laundry, 2 hours and 30 minutes per month for shopping, and 8 hours and 32 minutes per month for meal preparation. (Exhibit 1, page 5) The reduced hours are reflective of the Appellant's household composition, ranking and needs for these activities. The reductions to the HHS hours authorized for housework, shopping, laundry, and meal preparation are sustained.

Range of Motion

The HHS hours for range of motion exercises were reduced from 30 hours and 6 minutes per month (1 hour per day) to 22 hours and 34 minutes per month (45 minutes per day). (Exhibit 1, pages 4-5) This was based on the Appellant's guardian's report to the ASW that range of motion exercises are done once or twice per day for 30 minutes. (Exhibit 1, page 9) The Appellant's Guardian did not provide any additional testimony regarding range of motion assistance at the hearing. The reduced HHS hours is reflective of the fluctuation in completing range of motion exercises once or twice per day and is sustained.

Bathing

No change was made to the Appellant's HHS hours for bathing, 8 hours and 36 minutes per month (30 minutes per day 4 days per week). The Appellant's ██████████ testified that this was not sufficient as she bathes the Appellant daily for wound care. However, the

Appellant's Guardian must let the Department know when the Appellant has wounds, and therefore needs to be bathed daily, so that the HHS hours can be adjusted as appropriate.

Advance Notice

The ██████████, Advance Negative Action Notice indicates that the Department intends to make the reductions to the Appellant's case retroactive to ██████████. The Code of Federal Regulations, Chapter 42 addresses the Appellant's rights with respect to Advance Negative Notice of an agency action:

§ 431.211 Advance notice.

The State or local agency must mail a notice at least 10 days before the date of action, except as permitted under §§ 431.213 and 431.214 of this subpart.

§ 431.213 Exceptions from advance notice.

The agency may mail a notice not later than the date of action if—

- (a) The agency has factual information confirming the death of a recipient;
- (b) The agency receives a clear written statement signed by a recipient that—

- (1) He no longer wishes services; or
- (2) Gives information that requires termination or reduction of services and indicates that he understands that this must be the result of supplying that information;
- (c) The recipient has been admitted to an institution where he is ineligible under the plan for further services;
- (d) The recipient's whereabouts are unknown and the post office returns agency mail directed to him indicating no forwarding address (See § 431.231 (d) of this subpart for procedure if the recipient's whereabouts become known);
- (e) The agency establishes the fact that the recipient has been accepted for Medicaid services by another local jurisdiction, State, territory, or commonwealth;
- (f) A change in the level of medical care is prescribed by the recipient's physician;
- (g) The notice involves an adverse determination made with regard to the preadmission screening requirements of section 1919(e)(7) of the Act; or

(h) The date of action will occur in less than 10 days, in accordance with § 483.12(a)(5)(ii), which provides exceptions to the 30 days notice requirements of § 483.12(a)(5)(i)

§ 431.214 Notice in cases of probable fraud.

The agency may shorten the period of advance notice to 5 days before the date of action if—

- (a) The agency has facts indicating that action should be taken because of probable fraud by the recipient; and
- (b) The facts have been verified, if possible, through secondary sources.

The ██████████, Advance Negative Action Notice issued by the Department clearly failed to provide the Appellant with the required advance notice of at least 10 days that her HHS payments would be reduced as the effective date of the reduction was ██████████. (Exhibit 2) The Department has not implemented the reductions to the Appellant's HHS payments because a timely request for hearing was filed. (Exhibit 3) None of the exceptions to the advance notice requirement were present in this case. Therefore, the Department can not make the reductions to the Appellant's Home Help Services case effective any earlier than 10 days after the ██████████ Advance Negative Action Notice.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department did properly reduced the Appellant's HHS payments based on the available information. However, the reduction can not be effective any earlier than 10 days from the ██████████, Advance Negative action.

IT IS THEREFORE ORDERED THAT:

The Department's decision is PARTIALLY REVERSED. The reductions to the Appellant's HHS hours can not be made effective any earlier than 10 days from the ██████████ Advance Action Notice.

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

**Docket No. 2011-13011 HHS
Decision and Order**

cc:



Date Mailed: 4/7/2011

***** 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.