

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH
P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 334-9505

IN THE MATTER OF:

██████████,

Appellant

Docket No. 2011-14861 HHS
Case No. 88978291

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 ██████████. ██████████, mother, appeared on the Appellant's behalf. ██████████ was present. ██████████, sister, appeared as a witness for the Appellant. ██████████, 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 has been diagnosed with autism, Down's syndrome, developmental impairment, and cognitive impairment. (Exhibit 1, page 14)
3. The Appellant lives with his mother and twin sister. (Mother Testimony)
4. In ██████████, the Appellant applied for the Home Help Services Program. (Exhibit 1, page 6)
5. On ██████████, the Department issued an Adequate Action Notice indicating that the Appellant's application for Home Help Services was denied because a Medical Needs form was not completed and returned by the Appellant's physician. (Exhibit 1, pages 6-8)

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6. On [REDACTED], a Hearing request was filed on the Appellant's behalf to contest the denial, however, the Hearing request was not signed by the Appellant and no documentation of Guardianship was provided. (Exhibi1 1, page 4)
7. The Department subsequently received the Medical Needs form and continued processing the Appellant's Home Help Services Application.
8. On [REDACTED], the Adult Services Worker, made a visit to the Appellant's home to conduct a Home Help Services assessment. (Exhibit 1, page 18)
9. As a result of the information gathered from the assessment, the Adult Services Worker authorized a total of 24 hours and 29 minutes of Home Help Services per month with a monthly care cost of \$ [REDACTED]. Services were authorized for the tasks of bathing, grooming, toileting, medication, housework, laundry, shopping, and meal preparation. (Exhibit 1, page 17)
10. The Appellant's mother was enrolled as his Home Help Services provider. (Exhibit 1, page 17)
11. The Appellant's mother returned the first check issued by the Department for Home Help Services because the authorized hours/pay was insufficient. (Mother Testimony)
12. On [REDACTED], the Department issued an Advance Negative Action Notice indicating the Appellant's Home Help Services case would be suspended effective [REDACTED], so that he could find another provider. (Exhibit 1, pages 9-12)
13. On [REDACTED], the [REDACTED] hearing request was re-submitted with the Appellant's signature.
14. On [REDACTED], the Appellant's second Request for Hearing was received contesting the amount of Home Help Services authorized by the Department. (Exhibit 1, page 5)
15. No issue remains regarding the submission of the Medical Needs form. The Appellant's mother is only contesting the amount of Home Help Services authorized by the Department and there is no need to find a different provider. (Mother Testimony)

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*

On [REDACTED], the Adult Services Worker (ASW) completed a home visit as part of a comprehensive assessment of the Appellant's case. As a result of the assessment,

the Appellant was ranked as a level 4 for grooming and a level 5 for bathing, toileting, medication, housework, laundry, shopping, and meal preparation. (Exhibit 1, page 16) The Department authorized for Home Help Services for assistance with these activities totaling 24 hours and 29 minutes per month with a care cost of \$██████████. (Exhibit 1, page 17) The Appellant's mother was enrolled as his provider, but returned the first check issued by the Department.

The Appellant's mother contests the amount of Home Help Services authorized by the Department. The Appellant's mother asserted that the ASW did not authorize enough time to complete these tasks and that the resulting HHS payment was too low. She explained that when the Appellant received more hours when he was previously authorized for Home Help Services, resulting in a significantly higher payment. While this ALJ can only review the current HHS authorization, the evidence does support a finding that the current authorizations are not sufficient to meet the Appellant's needs with several activities.

Bathing, Grooming, Toileting, and Medication

The ASW testified that she discussed these activities with the Appellant's mother during the home visit, including what assistance is needed with each task. For example, with bathing the Appellant's mother reported that the Appellant just stands under the shower and his mother does everything for him. The ASW also stated she asked if it takes a long time or a short time to complete the activity. (ASW Testimony) The ASW authorized 5 hours and 1 minute per month (10 minutes 7 days per week) for bathing, 1 hour per month for grooming (2 minutes 7 days per week) for grooming, 7 hours and 1 minute per month (14 minutes 7 days per week) for toileting, and 1 hour and 30 minutes (3 minutes 7 days per week) for medication assistance. (Exhibit 1, page 17)

The Appellant's mother testified that it takes significantly longer than 10 minutes to assist the Appellant with his shower every day. Regarding grooming, the Appellant's mother indicated that the Appellant has started to brush his teeth but she must go back and re-do this task because he does not do a good job. She also shaves the Appellant and trims his nails occasionally. Regarding toileting, the Appellant's mother indicated that the Appellant can toilet himself, but does not clean himself thoroughly after using the bathroom resulting in soiled underpants. Regarding medications, the Appellant takes 4 medications that his mother must give to him. (Mother's Testimony)

The HHS hours authorized by the ASW are not consistent with the Appellant's rankings for these activities are not sufficient to meet his needs. The HHS hours shall be adjusted to 11 hours per month (22 minutes 7 days per week) for bathing, 5 hours (10 minutes 7 days per week) for grooming, 11 hours per month (22 minutes 7 days per week) for toileting, and 3 hours (6 minutes 7 days per week) for medication assistance.

Housework, Laundry, Shopping 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.

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 he is dependant on others and needs the maximum level of assistance. The Appellant lives with his mother and twin sister. After proration for the shared household of three persons, the Department authorized 34 minutes per month for housework, 1 hour per month for laundry, 21 minutes per month for shopping, and 8 hours and 2 minutes per month for meal preparation. (Exhibit 1, page 17) Department policy indicates the HHS hours should be prorated by at least half or more if appropriate when there is a shared household. However, the hours authorized for are not consistent with the Appellant's rankings and needs for assistance with these activities.

The Appellant's mother testified that most housework is done weekly, with a few tasks done monthly. However, the Appellant's mother and sister explained that the Appellant shreds paper all day everyday, resulting in piles that must be picked up. (Mother and sister Testimony) The Appellant's mother explained that she does the Appellant's laundry separately, and that she soaks the Appellant's soiled underpants daily. She also explained that they all go shopping once or twice per week, and the trips take at least two hours each time. The Appellant's mother cooks for everyone, and gives the Appellant his portion when he wants it.

The HHS hours shall be adjusted to 3 hours per month for housework, 1 hour and 40 minutes per month for shopping, 3 hours and 30 minutes per month for laundry, and 8 hours and 20 minutes per month for meal preparation.

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 assess the Appellant's HHS case.

IT IS THEREFORE ORDERED THAT:

The Department's decision is REVERSED. The Appellant's HHS hours shall be adjusted, retroactive to the effective date services began from the December 2010 application, as follows:

Bathing	11 hours per month
Grooming	5 hours per month
Toileting	11 hours per month
Medication	3 hours per month
Housework	3 hours per month
Laundry	3 hours and 30 minutes per month
Shopping	1 hour and 40 minutes per month
Meal Preparation	8 hours and 20 minutes per month

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

cc:



Date Mailed: 5/6/2011

***** 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.