

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH
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IN THE MATTER OF:

Docket No. 2011-25234 HHS
Case No. [REDACTED]

[REDACTED]
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 [REDACTED]. [REDACTED] appeared on the Appellant's behalf. [REDACTED], the Appellant appeared and testified. [REDACTED], caregiver, appeared as a witness for the Appellant. [REDACTED] represented the Department. [REDACTED], appeared as witnesses for the Department.

ISSUE

Did the Department properly eliminate the Appellant's Home Help Services (HHS) hours for bathing?

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 [REDACTED] year-old Medicaid beneficiary.
2. The Appellant has been diagnosed with mental retardation and myalgia. (Exhibit 1, page 20)
3. Between [REDACTED] and [REDACTED] the Adult Services Worker (ASW) sent five letters to the Appellant regarding scheduled appointments to complete a home visit. (Exhibit 1, pages 3-7)
4. On [REDACTED], a Request for Hearing filed on the Appellant's behalf was received regarding the home visits. (Exhibit 1, page 2)
5. On [REDACTED], the ASW sent an Advance Negative Action Notice to the Appellant indicating that his Home Help Services payments would be terminated effective [REDACTED], because he was not home for the last

three scheduled home call visits for the redetermination of his Home Help Services case so further eligibility could not be determined. (Exhibit 1, pages 8-10)

6. On ██████████ the ASW made a visit to the Appellant's home and was able to conduct a Home Help Services assessment. (Exhibit 1, pages 11 and 13)
7. The Department never proceeded with the proposed termination because the required home visit was completed. (ASW Testimony)
8. As a result of the information gathered from the assessment, the ASW determined that the Appellant's HHS hours for bathing should be eliminated. (Exhibit 1, pages 12-13 and 18)
9. On ██████████, the Department sent an Advance Negative Action Notice to the Appellant indicating that his Home Help Services payments would be reduced to ██████████ effective ██████████. (Exhibit 1, page 12)
10. On ██████████, a Request for Hearing filed on the Appellant's behalf was received contesting the elimination of HHS hours for bathing.

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 2-15 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. 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).

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 Appellant filed a hearing request on [REDACTED] regarding three scheduled appointments for a home visit that the ASW did not appear for or call him about. On [REDACTED], the ASW issued an Advance Negative Action Notice indicating the Appellant's HHS payments would terminate effective [REDACTED], because he was not home for the last three scheduled home call visits so she was unable to determine future eligibility. The Department never proceeded with the proposed termination because a home call visit was completed on [REDACTED]. However, based on the information the ASW gathered during the re-assessment, she determined the HHS hours for bathing should be eliminated. A second Advance Negative Action Notice was

issued on [REDACTED] indicating the Appellant's HHS payment would be reduced to [REDACTED] effective [REDACTED]. The Appellant filed a second request for hearing on [REDACTED] contesting the elimination of HHS hours for bathing. The Appellant's representative agreed to proceed on the only remaining negative action, the elimination of HHS hours bathing from the Appellant's HHS case.

The ASW completed a home visit as part of a comprehensive assessment on [REDACTED] [REDACTED]. The Appellant and his caregiver were present. The ASW's case notes indicate that both the Appellant and his caregiver reported that the Appellant no longer needs help with bathing and, specifically, that he can get in and out of the tub and wash himself with no help. (Exhibit 1, page 13)

The Appellant disagrees with the elimination of HHS hours for bathing. The Appellant and his caregiver testified that there was confusion because of how the ASW asked the question. They thought the ASW was asking about washing himself up once he is in the tub or at the sink, which the Appellant can do. They stated that the Appellant does need assistance with bathing. However, the Appellant's caregiver's testimony initially indicated the assistance she provides is supervising/monitoring. Her later testimony indicated she helps steady the Appellant if needed getting in/out of the tub as well as running the water and checking the temperature. The caregiver explained that the Appellant has had knee surgery and his knee may act up. However, she also stated that for recreation, the Appellant walks and rides a bike.

The ASW determined that the Appellant's HHS hours for bathing should be eliminated based on the information reported to her during the home visit. The ASW's credible testimony indicated she specifically asked about getting in and out of the tub as well as washing up. Her testimony is supported by her case notes from the day of the home visit. (Exhibit 1, page 13) The initial testimony of the Appellant's caregiver indicated she only provides supervision and monitoring assistance to the Appellant with bathing. The HHS program does not compensate for this level of assistance. Her later testimony indicated some limited hands on care to steady if needed, as well as running the water and checking the temperature. However, testimony that changes over the course of the hearing as policy is explained can not be found fully credible. Further, there is no mention of any knee problems on the DHS 54-A Medical Needs form completed by the Appellant's physician.

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 payments by eliminating the HHS hours for bathing.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

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

cc:

[REDACTED]

Date Mailed: 6/13/2011

***** 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.