

**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. 2011-32621 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 ██████████. ██████████, Appellant's mother and chore provider, appeared and testified on Appellant's behalf. Appellant also testified on her own behalf. ██████████ Appeals Review Officer, represented the Department of Community Health. ██████████ Appellant's Adult Services Worker (ASW) at the ██████████ DHS Office, appeared as a witness for the Department.

ISSUE

Did the Department properly reduce 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. Appellant is a ██████ year-old Medicaid beneficiary. (Exhibit 1, page 15).
2. Appellant has been diagnosed by a physician with insulin-dependent diabetes mellitus with retinopathy, Parry-Romberg Syndrome, hypothyroidism, and hyperlipidemia. Other sources have diagnosed Appellant as having migraine headaches and bipolar disorder. (Exhibit 1, page 11). Appellant is also blind. (Exhibit 1, page 15).
3. Appellant had been receiving 131 hours and 21 minutes of HHS per month, with a monthly care cost of ██████████. (Exhibit 1, page 14).
4. On ██████████, ASW ██████████ conducted a home visit with Appellant as part of a six-month review. (Exhibit 1, page 15).
5. Based on her assessment and information provided by Appellant's provider, ASW ██████████ reduced the HHS hours authorized for assistance with grooming, dressing, eating, taking medication, housework, shopping, and

meal preparation/cleanup. (Exhibit 1, pages 13-14).

6. After the reductions, Appellant would receive a total of 53 hours and 2 minutes of HHS per month, with a monthly care cost of ██████████ (Exhibit 1, page 13).
7. On ██████████ ASW ██████████ issued an Advance Negative Action Notice to Appellant indicating that her HHS payments would be reduced effective ██████████. (Exhibit 1, pages 5-9).
8. On ██████████, the Department received Appellant's Request for Hearing. (Exhibit 1, page 4).

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 Manuals 361 (6-1-07) (hereinafter "ASM 361") and Adult Services Manual 363 (9-1-08) (hereinafter "ASM 363") address the issues of what services are included in Home Help Services and how such services are assessed:

Home Help Payment Services

Home help services (HHS, or personal care services) are non-specialized personal care service activities provided under ILS to persons who meet eligibility requirements.

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.

Personal care services which are eligible for Title XIX funding are limited to:

Activities of Daily Living (ADL)

- Eating.
- Toileting.
- Bathing.
- Grooming.
- Dressing.
- Transferring.
- Mobility.

Instrumental Activities of Daily Living (IADL)

- Taking medication.
- Meal preparation/cleanup.
- Shopping for food and other necessities of daily living.
- Laundry.
- Housework.

(ASM 361, page 2 of 5)

COMPREHENSIVE ASSESSMENT

The Adult Services Comprehensive Assessment (DHS-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:

- Five hours/month for shopping
- Six hours/month for light housework
- Seven 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.

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.

(ASM 363, page 9 of 24)

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.

(ASM 363, pages 14-15 of 24)

On ██████████, ASW ██████ completed a home visit and comprehensive assessment as part of a six month review of Appellant's case. Following that assessment, the ASW made reductions to the HHS hours authorized for grooming, dressing, eating, taking medication, housework, shopping, and meal preparation/cleanup. Appellant disagrees with those reductions. Each of the disputed activities will be addressed in turn and, for the reasons given below, this Administrative Law Judge finds that the Department properly reduced the Appellant's HHS payments based on the available information.

Grooming

The HHS hours for bathing assistance were reduced from 12 minutes per day, 7 days per week, to 12 minutes per day, 1 day per week. (Exhibit 1, pages 13-14). As stated in the Functional Assessment Definitions and Ranks of Activities of Daily Living, "Grooming" is "Maintaining personal hygiene and neat appearance, including hair combing and brushing, oral hygiene, shaving, fingernail and toenail care (unless toenail care is medically contraindicated)." Adult Services Manual 365 (10-1-99), page 1 of 2.

By ranking Appellant a 5 in grooming (Exhibit 1, page 12), ASW ██████ appeared to be finding that Appellant was totally dependent and would require assistance in all aspects of grooming. However, ASW ██████ also testified that the ranking was in error and that the reduction was based on the statements of Appellant's provider that Appellant only required assistance in trimming her toenails one time a month. (Testimony of ASW ██████; Exhibit 1, page 12). The testimony of Appellant's representative provides that the actual grooming assistance in this case involves cutting Appellant's toenails and fingernails twice a month and putting a cream on Appellant's calluses every two weeks. (Testimony of ██████████). However, the provider also testified that she never informed ASW ██████ about putting a cream on. (Testimony of ██████████).

Therefore, based on the information the ASW had at the time, the Department's decision is affirmed. Even accepting Appellant's representative's testimony, the reduction of HHS time allocated for grooming is reflective of Appellant's need for assistance with that activity given the limited assistance actually provided.

Dressing

With respect to dressing, Appellant disputes the reduction from 60 minutes per day, 7 days per week, to 16 minutes per day, 7 days a week. (Exhibit 1, pages 13-14). In support of her argument, Appellant testified that, while she primarily dresses herself, her provider sets up and organizes her clothes so that Appellant, who is blind, can dress herself. (Testimony of Appellant). Appellant's representative testified to the same facts. (Testimony of ██████████). However, the ASW reported Appellant and the provider as making the same statements regarding Appellant's need for assistance with dressing and the reduction was in fact based on those statements. (Exhibit 1, page 12; Testimony of ASW ██████████). Based on that information, that Appellant primarily dresses herself and only requires some preliminary help, the reduction of HHS time allocated for dressing is sustained as it is reflective of Appellant's need for assistance with that activity

Eating

Appellant also disputes the reduction of HHS time allocated for assistance with eating from 44 minutes per day, 7 days per week, to 22 minutes per day, 7 days a week. (Exhibit 1, pages 13-14). The ASW's notes, the ASW's testimony, the provider's testimony and Appellant's testimony reflect that Appellant can basically eat on her own and that the only dispute is over whether the provider cuts Appellant's food for Appellant. (Exhibit 1, page 12; Testimony of Appellant; Testimony of ██████████; Testimony of ASW ██████████). Nevertheless, even accepting Appellant's provider's testimony during the hearing, *i.e.* that she cuts Appellant's food when necessary, the time allotted is more than sufficient given Appellant's ability to otherwise eat independently and the complete lack of any evidence that it takes more than 22 minutes a day to cut Appellant's food. Based on the information available at the time of the decision, the Department's reduction of time for medication is affirmed.

Taking Medication

The HHS hours for bathing assistance were reduced from 60 minutes per day, 7 days a week, to 16 minutes per day, 7 days per week. (Exhibit 1, pages 13-14). According to ASW ██████████, she reduced the time for assistance with taking medications because Appellant's provider only filled the pillmeter with pills, handed out pills, measured insulin and gave injections. (Testimony of ASW ██████████; Exhibit 1, page 12). Appellant's representative/provider testified that she puts the medication in a pill box and ensures that Appellant takes them by watching and reminding Appellant. (Testimony of ██████████). The provider also testified that she checks Appellant's insulin level at least twice a day and that it takes a few minutes each time. (Testimony of ██████████). The provider further testified that she gives injections at least three times a day and that it takes a couple of minutes each time. (Testimony of ██████████).

Therefore, while there remains a dispute over the allocation of time, ASW ██████████ notes and testimony are consistent with Appellant's representative's testimony regarding the actual assistance provided. In terms of time, this Administrative Law Judge would note that, as clearly provided in policy, services such as supervising, monitoring, reminding, guiding or encouraging are expressly not covered by Home Help Services. ASM 363,

pages 14-15 of 24. Moreover, while the actual times may vary on different days, the times for actual physical assistance identified by the provider essentially match the HHS time authorized. The Department has properly allocated for assistance with taking medications and its decision is affirmed as it is reflective of Appellant's need for assistance with that task.

Housework, Shopping and Errands, and Meal Preparation and Cleanup

The tasks of housework, shopping and errands, and meal preparation and cleanup are all IADLs. As such, they are subject to both maximum amounts of HHS hours and the Department's proration policy. ASM 363 addresses the issues of maximum times for and the proration of IADL services:

IADL Maximum Allowable Hours

There are monthly maximum hour limits on all IADLs except medication.

The limits are as follows:

- Five hours/month for shopping.
- Six hours/month for light housework.
- Seven hours/month for laundry.
- 25 hours/month for meal preparation

These are **maximums**; as always, if the customer needs fewer hours, that is what must be authorized. Hours should continue to be prorated in shared living arrangements.

(ASW 363, pages 3-4 of 24 (underline added by ALJ))

Service Plan Development

Address the following factors in the development of the service plan:

- 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.

(ASM 363, pages 4-5 of 24)

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The undisputed evidence in this case establishes that, while Appellant was previously receiving the maximum amount of HHS for all IADLs, she is living with her parents in a shared living arrangement. Therefore, the Department was bound to follow the mandated policy and prorate the HHS time and payment for any IADLs by at least one-half.

The Department did prorate HHS for housework, shopping and errand, and meal preparation and cleanup by one-half and that decision must be sustained as ASM 363 does not provide for any exceptions. She is receiving one-half of the maximum HHS hours she can receive for housework, shopping and meal preparation, and that is all she is allowed to receive under the proration policy. To the extent the Department failed to follow the proration policy by not prorating the IADL of laundry, it was generous in favor of the Appellant. Appellant can point to no error that harmed her and the Department's decision to prorate and reduce is sustained.

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 based on the available information.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

Steven Kibit
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:



Date Mailed: 8/1/2011

***** 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.