

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF:

Docket No. 2011-32627 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]. Appellant appeared and testified on her own behalf. [REDACTED] also testified on Appellant's behalf. [REDACTED], Appeals Review Officer, represented the Department of Community Health. [REDACTED], Appellant's Adult Services Worker (ASW), and [REDACTED], Adult Services Supervisor, at the [REDACTED] DHS Office appeared as witnesses 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 [REDACTED] year-old Medicaid beneficiary. (Exhibit 1, page 15).
2. Appellant has been diagnosed with bipolar disorder, arthritis, tendonitis, carpal tunnel syndrome, chronic obstructive pulmonary disease (COPD), asthma, knee/back injury, and diabetes. (Exhibit 1, page 16).
3. Appellant had been receiving 68 hours and 44 minutes of HHS per month, with a care cost of [REDACTED] per month. (Exhibit 1, page 13).
4. On [REDACTED], ASW [REDACTED] conducted a home visit with Appellant as part of a six-month review. (Exhibit 1, page 10; Testimony of ASW [REDACTED]).
5. Based on her assessment and information provided by Appellant, ASW [REDACTED] reduced the HHS hours authorized for taking medication and

terminated the HHS payments for bathing, grooming, dressing, and toileting. The HHS times for shopping, meal preparation/cleanup, housework, and laundry remained the same. (Exhibit 1, pages 10, 12-14; Testimony of ASW ██████████).

6. The reduction resulted in a total of 31 hours and 35 minutes of HHS per month, with a monthly care cost of ██████████. (Exhibit 1, page 12).
7. On ██████████, ASW ██████████ issued an Advance Negative Action Notice to Appellant indicating that her HHS payments would be reduced effective ██████████. (Exhibit 1, pages 7-9).
8. On ██████████, the Department received Appellant's Request for Hearing. In that request, Appellant challenges the reductions and terminations of HHS for the tasks identified above. (Exhibit 1, pages 4-6).
9. The Department has maintained Appellant's HHS payments at the prior level, ██████████ per month, pending this hearing. (Testimony of ASW ██████████; Testimony of Appellant).

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.

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 reduced the HHS hours authorized for taking medication and terminated the HHS hours authorized for bathing, dressing, grooming and toileting. Appellant disagrees with those actions. Each of the specific disputed activities will be addressed in turn and, for the reasons discussed below, this Administrative Law Judge finds that the Department properly reduced Appellant's HHS payments based on the available information. However, because the Department failed to provide Appellant with proper notice, the effective date of the reduction must be changed.

Reduction

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.

(ASM 363, pages 2-4 of 24)

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)

Taking Medication

Appellant disputes the reduction of HHS time allocated for assistance with taking medication from 6 minutes per day, 7 days per week to 2 minutes per day, 7 days a week. (Exhibit 1, pages 12-13). The ASW's notes, the ASW's testimony, and Appellant's testimony all reflect that the provider only has to set out the medications for Appellant, which takes two minutes a day, and that Appellant can physically take the medications. (Exhibit 1, page 10; Testimony of ASW ██████████; Testimony of Appellant). Appellant also appears to seek HHS for the time the provider spends making sure Appellant takes the medication. However, as described above, services such as supervising, monitoring, reminding, guiding or encouraging are not covered by HHS. ASM 363, pages 14-15 of 24. Therefore, based on the information available at the time

of the decision, the Department's reduction of time for taking medication is sustained as it is reflective of Appellant's need for assistance.

Grooming

HHS assistance for grooming was terminated during the most recent assessment. (Exhibit 1, pages 12-13). According to ASW ██████████ testimony, she terminated HHS for grooming because Appellant told her that Appellant could groom herself. (Testimony of ASW ██████████). Appellant testified that she could groom herself and that she told ASW ██████████ that she could groom herself. (Testimony of Appellant). Accordingly, the termination of grooming assistance is affirmed.

Dressing

ASW ██████████ also testified that she terminated HHS payments for dressing because Appellant told her Appellant can dress herself. (Testimony of ASW ██████████). During the hearing, Appellant testified both that she is able to dress herself and that she told ASW ██████████ she is able to dress herself. (Testimony of Appellant). Based on that information, the termination of HHS time allocated for dressing is sustained as it is reflective of Appellant's need for assistance with that activity.

Toileting

As with grooming and dressing, ASW testified that she terminated HHS for the task of toileting based on what Appellant told her. (Testimony of ASW ██████████). Likewise, Appellant's testimony again confirms that she told ASW ██████████ that Appellant can perform the task independently. (Testimony of Appellant). Therefore, based on the information provided by Appellant, the decision to terminate HHS for toileting is affirmed.

Bathing

HHS assistance for bathing was also terminated during the most recent assessment. (Exhibit 1, pages 12-13). According to ASW ██████████, she terminated HHS for bathing because, while Appellant claimed that Appellant needs help getting in-and-out of the bathtub, she observed Appellant walking and climbing stairs unassisted. (Exhibit 1, page 10; Testimony of ASW ██████████). Appellant testified that she does need such assistance, while also acknowledging that she did walk up stairs unassisted while ASW ██████████ was present in her home. (Testimony of Appellant).

Given the information available to the Department at the time of its decision, the decision to terminate HHS for bathing must be affirmed. Appellant did state that she needed such assistance, but her own actions belie her request. As observed by ASW ██████████ and undisputed by Appellant, Appellant walked and climbed stairs without assistance while ASW ██████████ was in her home and such activities suggest that Appellant could climb in-and-out of her bathtub without assistance. Therefore, based on the information available at the time of the decision, the Department's termination of assistance with bathing is sustained as it is reflective of Appellant's need for assistance.

Notice

The ██████████ Advance Negative Action Notice in this case indicates that the Department intends to make the reduction to the Appellant's HHS payments effective ██████████. (Exhibit 1, pages 7-9). 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.

None of the exceptions to the advance notice requirement were present in this case and the Department's ██████████ Advance Negative Action Notice clearly failed to provide Appellant with the required advance notice of at least 10 days as the effective date of the reduction was ██████████. (Exhibit 1; pages 7-9). The Department has not implemented the reductions to the Appellant's HHS payments because a timely request for hearing was filed. (Exhibit 1, pages 4-6). Therefore, while the reduction itself is sustained, the Department cannot make the reduction to Appellant's HHS payments effective any earlier than 10 days after the ██████████ Advance Negative Action Notice.

[REDACTED]
Docket No. 2011-32627 HHS
Decision and Order

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly reduced Appellant's HHS payments based on the available information, but that the reduction cannot be effective any earlier than 10 days after the [REDACTED] Advance Negative Action Notice.

IT IS THEREFORE ORDERED THAT:

The Department's decision is **AFFIRMED IN PART** and **REVERSED IN PART**. The reduction to Appellant's HHS payments cannot be made effective any earlier than 10 days from the [REDACTED] Advance Negative Action Notice.

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

cc: [REDACTED]

Date Mailed: 7/8/2011

***** 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.