

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

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IN THE MATTER OF:

██████████,

Appellant.

Docket No. 2011-33558 HHS
Case No. 0065346628

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 legal guardian and chore provider, appeared and testified on Appellant's behalf. Appellant's siblings were also present during the hearing, but they did not testify. ██████████, Manager, Appeals Section, represented the Department of Community Health. ██████████, Appellant's Adult Services Worker (ASW) at the ██████████ County 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 13).
2. Appellant has been diagnosed by a physician with mental retardation (MR) and cerebral palsy. Appellant's guardian has also diagnosed Appellant as having had spinal meningitis as a baby and retina-eye surgery in ██████████. (Exhibit 1, page 11).
3. Appellant had been receiving 56 hours and 45 minutes of HHS per month, with a care cost of \$ ██████████ per month. (Exhibit 1, page 9).
4. On ██████████, ASW ██████████ conducted a home visit with Appellant and Appellant's guardian. (Exhibit 1, page 6).
5. Based on her assessment and information provided by Appellant's guardian, ASW ██████████ reduced the HHS hours authorized for eating and

meal preparation/cleanup. The HHS hours for grooming were increased and the times for all other tasks remained the same. (Exhibit 1, pages 9-10).

6. Following the changes in HHS, Appellant receives 46 hours and 39 minutes of HHS per month, with a monthly care cost of \$ [REDACTED]. (Exhibit 1, page 10).
7. On [REDACTED], ASW [REDACTED] issued an Advance Negative Action Notice to Appellant indicating that her HHS payments would be reduced effective [REDACTED]. (Exhibit 1, pages 3-5).
8. On [REDACTED], the Department received Appellant's Request for Hearing, filed by Appellant's guardian. (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 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 an HHS comprehensive assessment in accordance with Department policy. Following that assessment, the ASW made reductions to the HHS hours authorized for eating and meal preparation/cleanup. HHS for other tasks were either increased or remained the same. Appellant, through her guardian, disagrees with the reductions. For the reasons discussed below, this Administrative Law Judge finds that the Department properly reduced HHS payments for assistance with eating, but erred in reducing HHS for the task of meal preparation and cleanup.

Eating

With respect to dressing, Appellant disputes the reduction from 22 minutes per day, 7 days per week, to 10 minutes per day, 7 days a week. (Exhibit 1, pages 9-10). ASW ██████ testified that Appellant's guardian told her that the assistance with eating only involves cutting Appellant's food and, consequently, she recommended that the HHS for that task be reduced. (Testimony of ASW ██████). Similarly, when ranking Appellant a 3 in eating, ASW ██████ wrote that Appellant only needs daily help with cutting her food. (Exhibit 1, page 12). Appellant's guardian agrees with ASW ██████'s testimony and also concedes that Appellant eats her meals unassisted when at school. (Testimony of Leshia Martin).

Appellant's guardian also testified, however, that she needs to be there when Appellant is eating. (Testimony of ██████████). Nevertheless, she does not describe any need for other physical assistance and HHS are not available for services such as supervising, monitoring, reminding, guiding or encouraging. ASM 363, pages 14-15 of 24. Accordingly, the reduction in HHS for eating is sustained as it is reflective of Appellant's need for assistance with that task.

Meal Preparation and Cleanup

With respect to meal preparation and cleanup, Appellant's HHS were reduced from 22 minutes per day, 7 days a week, to 11 minutes per day, 7 days a week. (Exhibit 1, pages 9-10). According to ASW ██████, she based the reduction on the fact that Appellant was eating breakfasts and lunches at school. (Testimony of ASW ██████). ASW ██████ also stated that she took the regular time for dinner, 18 minutes a day, and

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prorated it by half. (Testimony of ASW [REDACTED]). She further testified that she also added 2 more minutes a day to account for the occasional time Appellant did not get a lunch or breakfast at school. (Testimony of ASW [REDACTED]).

However, in calculating the HHS time for meal preparation and cleanup, ASW [REDACTED] neglected to consider that Appellant only went to school five days a week and that she did not attend school on weekends. Even the extra 2 minutes a day not allocated for dinners were for meals during the school week, as ASW [REDACTED] acknowledged that Appellant did not always have both breakfast and lunch at school. At the very least, HHS services should have also been allocated for breakfast and lunch on Saturday and Sunday. Accordingly, the Department's decision with respect to HHS for meal preparation and cleanup is reversed and it should reassess Appellant's needs with respect to that task.

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 for eating, but erred in reducing the HHS payments for meal preparation and cleanup. The Department must reassess Appellant's needs with respect to meal preparation and cleanup.

IT IS THEREFORE ORDERED THAT:

The Department's decision is **AFFIRMED IN PART** and **REVERSED IN PART**.

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

cc:

[REDACTED]

Date Mailed: 7/8/2011

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***** 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 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.