

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

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IN THE MATTER OF:

██████████,

Appellant

Docket No. 2011-38224 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 ██████████, the Appellant, appeared on her own behalf. ██████████, husband, and ██████████, caregiver, appeared as witnesses for the Appellant. ██████████, Manager Appeals Section, represented the Department. ██████████, Adult Services Worker, ██████████ Adult Services Worker, 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 a history of multiple medical impairments including back pain, diabetes, detached retina-legal blindness, arthritis, hypertension, obesity, chronic bed sore, and neuropathy of legs. (Exhibit 1, pages 2 and 14)
3. Between ██████████ and ██████████, the Appellant questioned the HHS hours authorized for her and her husband's HHS cases and requested an increase in the hours authorized. (Exhibit 1, pages 9-10)
4. On ██████████, the Department received a DHS-54A Medical Needs

Form completed by the Appellant's doctor. A medical need for assistance was certified for the activities of toileting, bathing, grooming, dressing, transferring, mobility, taking medications, meal preparation, shopping, laundry, and housework. Under the complex care services, range of motion was marked. (Exhibit 1, page 2)

5. On ██████████, two Adult Services Workers made a visit to the Appellant's home as part of a comprehensive assessment of her HHS case. (Exhibit 1, pages 7-8 and Adult Services Worker ██████████ Testimony)
6. On ██████████, the Department issued a Services and Payment Approval notice to the Appellant indicating that her annual redetermination has been completed, approved and increased by ██████████ per month. (Exhibit 1, page 4)
7. The Appellant has been approved for assistance with bathing, grooming, dressing, toileting, transferring, mobility, medication, housework, laundry, shopping, and meal preparation totaling 47 hours and 21 minutes per month with a total monthly care cost of ██████████. (Exhibit 1, page 13)
8. On ██████████, and ██████████, the Appellant and her husband filed hearing requests stating they wanted services 6 hours per day, 6 days per week for both of their needs as indicated in the attached letter from their doctor. (Exhibit 2, pages 1-4)

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 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

In the present case, a DHS-54A Medical Needs form was received from the Appellant's physician on ██████████, certifying a medical need for assistance with toileting, bathing, grooming, dressing transferring, mobility, taking medications, meal preparation, shopping, laundry, and housework. Under the complex care services, range of motion was marked. (Exhibit 1, page 2) The Department made a home visit on ██████████ as part of a comprehensive assessment of the Appellant's case. (Exhibit 1, pages 7-8) The Department also considered that the Appellant lives with her husband who is also receiving Home Help Services. Under Department policy, the hours authorized for housework, laundry, shopping and meal preparation were prorated to reflect the shared household. The Department also authorized times for assistance with bathing, grooming, dressing, toileting, transferring, mobility, and medication based on the information gathered for the home visit. (Exhibit 1, page 13 and Adult Services Worker ██████████ Testimony)

The Appellant did not contest the times authored by the Department for any specific activity. Rather she testified that she wanted the 6 hours 6 days per week for both her needs and her husband's needs, as indicated in the letter from their doctor. This way the caregiver would not be rushed to get everything done. (Appellant Testimony) As noted during the hearing proceedings, the Home Help Program is not designed to share authorized hours between two persons, to consider a total number of hours needed per day, nor for a physician to prescribe or authorize services. Under the above cited Department policy, a physician certifies a medical need for assistance, but the comprehensive assessment is completed by an Adult Services Worker who determines the individual's ranking for each activity and allocates times for each activity that the individual has been ranked as a level 3 or higher.

The Department authorized HHS hours for the activities the Appellant was ranked as a 3 or higher for, bathing, grooming, dressing, toileting, transferring, mobility, medication, housework, shopping, laundry and meal preparation. (Exhibit 1, pages 13 and 15-18) Neither the Appellant nor her witnesses indicated that the HHS hours authorized for any specific task were insufficient. The Department properly prorated the HHS hours for housework, shopping, laundry, and meal preparation based on the shared household. Accordingly, the HHS hours authorized for these activities are upheld.

However, the Appellant also testified that hours for range of motion exercises were not added to the chore grant. The Appellant's physician did mark this activity on the DHS-54A Medical Needs form in the listing of complex care services. (Exhibit 1, page 2) Adult Services Worker ██████████ testified that she did not recall range of motion exercises being discussed during the home visit. Adult Services Worker ██████████, who was also present for the home visit, testified that she had prior experience as a physical therapy

assistant. Looking back on her observations of the Appellant during the home visit, Adult Services Worker ██████████ stated that she did not see a justification for authorizing HHS hours for range of motion exercises for the Appellant. She explained that the Appellant may have range of motion exercises from the doctor she should be doing herself (active range of motion) rather than having a caregiver manipulate her limbs as would be done for a paralyzed person (passive range of motion exercises). However, the Adult Service Worker ██████████ testimony did not indicate that range of motion exercises were considered at the time of the re-determination.

The Appellant's doctor checked range of motion in the listing of complex care services on the DHS-54A Medical Needs form received on ██████████. (Exhibit 1, page 2) Accordingly, the Department should have addressed range of motion exercises with the Appellant during the ██████████ home visit for the re-determination. However, the doctor checking range of motion on the form is not sufficient for HHS hours for this activity to be added to the Appellant's chore grant. Additional information is needed to determine what assistance the Appellant needs with this activity and the appropriate hours, if any, that should be authorized for assistance with range of motion exercises. Accordingly, the Department will need to complete an assessment regarding this activity with the Appellant. The Department may also wish to obtain additional information from the Appellant's physician clarifying what exercises, if any, require hands on assistance from the Appellant's caregiver, as well as the frequency and duration that these exercises should be completed.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly assessed the Appellant's Home Help Services (HHS) case regarding bathing, grooming, dressing, toileting, transferring, mobility, medication, housework, laundry, shopping, and meal preparation; but did not assess range of motion exercises at the time of the re-determination.

IT IS THEREFORE ORDERED THAT:

The Department's decision is PARTIALLY AFFIRMED and PARTIALLY REVERSED. The HHS hours authorized for bathing, grooming, dressing, toileting, transferring, mobility, medication, housework, shopping, laundry, and meal preparation are affirmed. The Department is ORDERED to complete an assessment regarding range of motion exercises for the Appellant.

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

[REDACTED]
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Decision and Order

cc:

[REDACTED]

Date Mailed: 7/20/2011

***** 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.