

**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. 2011-43226 HHS
Case No. 71348548

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ), pursuant to M.C.L. § 400.9 and 42 C.F.R. § 431.200 *et seq.*, upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. ██████████, Appellant's legal guardian, daughter and chore provider, appeared and testified on Appellant's behalf. ██████████, Appeals Review Officer, represented the Department of Community Health. ██████████ Adult Services Worker (ASW), from the ██████████ County DHS-HHS Office appeared as a witness for the Department. ASW Susan Quinn was also present as an observer.

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.
2. Appellant has been diagnosed by a physician with cerebral vascular accident (CVA), hemideria, contractures, and hypertension (HTN). (Exhibit 1, page 28).
3. Appellant had been receiving 133 hours and 55 minutes of HHS per month, with a care cost of \$ ██████ per month. (Exhibit 1, page 26).
4. On ██████████, ASW ██████ conducted a home visit with Appellant and Appellant's guardian/chore provider. (Exhibit 1, page 24).

5. Based on information provided by Appellant and Appellant's provider during that home visit, ASW ██████████ decided to reduce the HHS hours authorized for assistance with eating and range of motion. All other HHS would remain the same. (Exhibit 1, page 24; Testimony of ASW ██████████).
6. After the reductions, Appellant would receive a total of 103 hours and 58 minutes of HHS per month, with a monthly care cost of \$██████████. (Exhibit 1, page 27).
7. On ██████████, the Department issued an Advance Negative Action Notice to Appellant indicating that her Home Help Services payments would be reduced. The effective date of the reduction was ██████████. (Exhibit 1, pages 20-23).
8. On ██████████, the Department received Appellant's Request for Hearing. In that request, Appellant's representative asserts that Appellant's medical conditions are the same and that there was no justification for the changes. (Exhibit 1, pages 4-6).

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 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)

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)

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On ██████████, ASW ██████████ completed a home visit and an HHS comprehensive assessment in accordance with Department policy. Following that assessment, the ASW reduced the HHS hours authorized for assistance with eating and range of motion. Appellant disagrees with those reductions. Both 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.¹

Eating

With respect to the task of eating, ASW ██████████ reduced HHS from 44 minutes per day, 7 days a week, to 10 minutes a day, 7 days a week. (Exhibit 1, pages to 26-27).

According to ASW ██████████ she made that reduction because Appellant and Appellant's provider informed her during the home visit that Appellant is able to feed herself if food is prepared for Appellant. (Exhibit 1, page 24; Testimony of ASW ██████████). ASW ██████████ also testified and recorded that she was told that Appellant can use a spoon to put food into her mouth, but that Appellant still needs someone to cut food for her. (Exhibit 1, page 24; Testimony of ASW ██████████ ASW ██████████ further testified that she watched Appellant use her hands and it appeared that Appellant was able to bring food to her mouth and that neither Appellant nor her daughter mentioned Appellant dropping utensils. (Testimony of ASW ██████████).

Appellant's representative/provider testified, however, that Appellant is completely dependent on her assistance and that, while Appellant does put food to mouth, Appellant requires help in doing so. (Testimony of ██████████). Appellant's provider also testified that it is very difficult for Appellant to hold a fork or spoon. (Testimony of ██████████).

As stated in the Functional Assessment Definitions and Ranks of Activities of Daily Living, "Eating" is "Reaching for, picking up, grasping utensil and cup, getting food on utensil, cup to mouth, chewing, swallowing food and liquids, manipulating food on plate, cutting food. Cleaning face and hands as necessary following a meal." Adult Services Manual 365 (10-1-99), page 1 of 2. Appellant's provider testified that she assists in all activities discussed in that definition (Testimony of ██████████), but there is no dispute over whether Appellant requires some assistance and the issue solely turns on what ASW ██████████ was told during the home visit. This review of the Department's decision is limited to the information available to the Department at the time it made its decision. Here, ASW ██████████ testified that she was told by Appellant and Appellant's provider that Appellant is able to feed herself if food is prepared for her. (Exhibit 1, page 24; Testimony of ASW ██████████). Appellant's provider now denies saying that about Appellant, but she also testified that she had trouble understanding what "eating"

¹ While the Department's records and ASW ██████████'s testimony provide that the only reductions in this case were made in the areas of eating and range of motion, Appellant's representative/provider testified that other, smaller reductions have been made. However, as displayed in the payment authorization history provided by the Department, the other changes to the HHS payments were based on a change in FICA taxes and nothing the Department did. (Exhibit 2, pages 2-4).

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entailed during the home visit and that Appellant does put food to her mouth. (Testimony of [REDACTED]). ASW [REDACTED] also testified that she watched Appellant use her hands and it appeared that Appellant was able to bring food to her mouth. (Testimony of [REDACTED]).

Given those observations, in addition to the other testimony and ASW [REDACTED] extensive notes, this Administrative Law Judge finds ASW [REDACTED] to be credible with respect to what she was told during the home visit. Consequently, this Administrative Law Judge finds that Appellant and Appellant's provider informed ASW [REDACTED] during the home visit that Appellant is able to feed herself if food is prepared for her and that, based on that information, the Department properly reduced HHS for assistance with eating. Appellant has failed to meet her burden of demonstrating by a preponderance of evidence that the Department erred and the Department's decision with respect to eating is sustained.

Range of Motion

Regarding range of motion, ASW [REDACTED] reduced HHS from 45 minutes per day, 7 days a week, to 45 minutes a day, 3 days a week. (Exhibit 1, pages 26-27).

According to ASW [REDACTED], she made that reduction because Appellant's provider told her that the provider only does range of motion exercises 3 times a week. (Exhibit 1, page 24; Testimony of ASW [REDACTED]). ASW [REDACTED] also testified that the provider told her that the provider only did the exercises 3 times a week because she thought Appellant was only approved for such exercises 3 times a week. (Testimony of ASW [REDACTED]).

Appellant's provider testified during the hearing that the range of motion exercises were ordered by Appellant's doctor and approved by Appellant's physical therapist. (Testimony of [REDACTED]). She also testified that she performs the exercises 1 hour a day, 6 times per week. (Testimony of [REDACTED]). Appellant's provider further testified that Appellant was only approved for range of motion exercises 3 times a week, but later acknowledged that she was looking at a previous time and task sheet and that Appellant was approved for 7 days a week of exercises prior to the most recent reduction. (Testimony of [REDACTED]).

Payments for HHS should reflect the Appellant's need for physical assistance and what assistance is actually being provided. Here, while Appellant was previously approved for assistance with range of motion 7 days a week, ASW [REDACTED] testified that she was told that assistance with that task was only being performed 3 days a week and she therefore reduced the HHS authorized to 3 days a week. This Administrative Law Judge finds ASW [REDACTED] testimony regarding what she was told during the home visit to be credible and that credibility is only strengthened by the Appellant's guardian/provider's confusion over how many days had previously been authorized. Appellant's provider testified at first that Appellant was only approved for 3 days a week of assistance with range of motion and ASW [REDACTED] testified that the provider was only doing 3 days a week of assistance because she mistakenly thought that only 3 days

was approved. Given that credible testimony, Appellant has failed to meet her burden of demonstrating by a preponderance of evidence that the Department erred by reducing the number of days for assistance with range of motion. Accordingly, the Department's decision with respect to that task 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 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: 9/12/2011

***** 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 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.