

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

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IN THE MATTER OF:

██████████,

Appellant

Docket No. 2011-52742 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. ██████████, Appeals Review Officer, represented the Department. ██████████, Adult Services Worker (ASW), appeared as a witness for the Department. ██████████ was also present as an observer.

ISSUE

Did the Department properly reduce the 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. The Appellant is a ██████ year-old Medicaid beneficiary.
2. The Appellant was previously diagnosed with disc herniation L5-S1, bladder dysfunction, bronchitis, and right hand fracture. (Exhibit 1, page 18)
3. The Appellant had been receiving a total of 50 hours and 27 minutes of Home Help Services per month with a monthly care cost of ██████████ (Exhibit 1, page 23)
4. On ██████████, the ASW made a visit to the Appellant's home to conduct a Home Help Services assessment. (Exhibit 1, pages 11-16)

5. As a result of the information gathered, the ASW determined that the Appellant's HHS hours should be reduced. The ASW eliminated the HHS hours authorized for bathing, grooming, dressing, toileting, transferring, housework, laundry, shopping, and meal preparation and slightly increased the HHS hours authorized for medication. (Exhibit 1, pages 23-24)
6. On [REDACTED], the Department sent an Advance Negative Action Notice to the Appellant indicating that her HHS case would be reduced to [REDACTED] per month effective [REDACTED], because the Appellant is physically capable of providing self-care except for setting up medications based on the [REDACTED], in-home redetermination. (Exhibit 1, pages 6-9)
7. A medical provider completed a DHS-54A Medical Needs form listing a last visit of [REDACTED], and MVA as the sole diagnosis. (Exhibit 1, page 19)
8. On [REDACTED], the Appellant's Request for Hearing was received.

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), addresses the comprehensive assessment, functional assessment, time and task authorization, service plan development, necessity for services, and services not covered:

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).

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.

Exception: DCH will accept a DHS-54A completed by a VA physician or the VA medical form in lieu of the medical needs form.

The medical professional certifies that the client's need for service is related to an existing medical condition. The medical professional does not prescribe or authorize personal care services.

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*

The ASW completed a home visit as part of a comprehensive assessment on [REDACTED]. The ASW testified she observed the Appellant ambulating unassisted as well as lifting and carrying two cases of medications, weighing about 3-5 pounds. The ASW stated she did not observe any impairments with reaching or bending down to touch her feet while sitting. The ASW's case notes also indicate she understood that the Appellant's bedroom was upstairs, indicating the Appellant was capable of ambulating up/down stairs. The ASW stated that Your Ride was also discussed. (ASW Testimony and Exhibit 1, pages 11-16) Based on the Appellant's statements and the ASW's observations during the home visit, the ASW determined that the Appellant's HHS hours authorized should be reduced. The HHS hours for bathing, grooming, dressing, toileting, transferring, housework, laundry, shopping, and meal

preparation were eliminated, the HHS hours for medication were slightly increased. (Exhibit 1, pages 23-24)

The Appellant disagrees with the eliminations and testified that the ASW's case notes contain statements that are not true. For example, the Appellant stated she has never gotten a ride from Your Ride. The Appellant further testified she does not go upstairs and she has been living in the downstairs guest room. The Appellant stated she is on Social Security disability. The Appellant explained that she broke her leg and arm at a store, her knee is still fractured and she is back in physical therapy, which has been going on since ██████████. The Appellant was also in a car accident in ██████████. The Appellant stated she has a problem with her hands, which would not be diagnosed until an upcoming appointment. The Appellant testified she continues to have problems with her fingers and legs. For example, she almost hit her grandson with a pot she dropped trying to cook, she has fallen in the bath, and has broken things coming around the corner of aisles at the store. (Appellant Testimony)

With her hearing request, the Appellant submitted a DHS-54A Medical Needs form listing MVA as the sole diagnosis and a last seen date of ██████████. (Exhibit 1, page 19) However, the diagnosis of MVA does not specify what injuries or impairments the Appellant has as a result of the car accident, or any other unrelated impairments. The provider did not circle or otherwise indicate which of the listed activities the Appellant needs assistance with. The form was signed, but the signature is not clear enough to read the providers name, there is no signature date, there is no printed name and title of the provider, phone number, or provider identification number. (Exhibit 1, page 19) Under the Department's policy, the DHS-54A Medical Needs form must be signed and dated by a Medicaid enrolled doctor, nurse practitioner, physical therapist, or occupational therapist and the Medicaid provider identification number must be entered on the form. The medical professional certifies that the client's need for service is related to an existing medical condition, but does not prescribe or authorize personal care services. Adult Services Manual (ASM 363) 9-1-2008, Page 9 of 24. The DHS-54A Medical Needs form submitted with the Appellant's hearing request does not contain enough information to be used in assessing the Appellant's HHS case.

Further, the Appellant's testimony was inconsistent in several areas, and can not be found fully credible. For example, the Appellant's testimony indicates that she almost dropped a pot on her grandson, yet she must be able to complete at least some meal preparation since the Appellant also testified that she and a neighbor take turns preparing lunches. (Appellant Testimony) The Appellant's need to utilize any equipment for mobility is unclear. She was observed to walk unassisted during the ██████████, home visit. (ASW Testimony and Exhibit 1, pages 11-16) However, the Appellant's testimony indicates she has a cane, a power chair and recently got a walker. The Appellant testified that she can use her power chair three times per day. However, her testimony also indicated that her power chair is now upstairs, though other testimony indicated the Appellant does not go upstairs and she

even had to give her dog up because he would get stuck upstairs. (Appellant Testimony)

The Appellant's testimony did support some of the eliminations made to her HHS case. For example, toileting was properly eliminated as the Appellant testified she is able to change her own incontinence products. (Appellant Testimony) The Appellant did not provide any testimony indicating she needs assistance with dressing or grooming. Rather, the Appellant testified her daughter is heavy handed so she tries to do what she can do. For example, the Appellant stated she can roll her own socks up her legs, which is consistent with the ASW's observations that she could bend from a sitting position with no difficulties. (Appellant and ASW Testimony) The Appellant's testimony also did not indicate a need for assistance with transferring. The elimination of HHS hours for toileting, dressing, grooming, and transferring is upheld.

The evidence indicates there may be a need for reduced, rather than eliminated, HHS hours for the IADLs and bathing. The ASW's case notes indicate some questionable determinations were made regarding the IADLs. For example, the ASW wrote that the Appellant could use a Swiffer and/or vacuum from her power chair to clean the kitchen floor or carpeting on the main floor of her home. (Exhibit 1, pages 14-15) The Appellant's testimony indicated she can participate in shopping at the store at least to some extent, but does not have the carrying capacity to complete all of her own shopping. Similarly, the Appellant does not have laundry facilities in her home and would need assistance carrying laundry baskets and detergent if she utilized public transportation. Bathing assistance may only be needed temporarily as the Appellant was supposed to be getting a new shower chair, but she did not have it as of the [REDACTED], hearing proceedings. While the Appellant may prefer to take a bath sometimes, if she is able to bathe independently utilizing a shower chair, she would not be eligible for HHS hours for bathing.

Additional information is needed to determine the appropriate ongoing authorization for the IADLs and bathing. The Department shall complete a new assessment and the Appellant should provide more detailed current documentation from her doctor(s) and/or physical therapist regarding her needs for assistance with ADLs and IADLs for the assessment.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly eliminated the HHS hours for toileting, dressing, grooming, and transferring. Additional information is needed to determine the appropriate ongoing authorization for the IADLs and bathing.

IT IS THEREFORE ORDERED THAT:

The Department's decision is **PARTIALLY AFFIRMED AND PARTIALLY REVERSED**. The elimination of HHS hours for toileting, dressing, grooming, and transferring are **AFFIRMED**. The elimination of HHS hours for bathing and the IADLs is **REVERSED**. The Department shall complete a new assessment to determine the appropriate ongoing authorization for the IADLs and bathing.

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

cc:

[REDACTED]

Date Mailed: 12/7/2011

***** 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.