

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF:

██████████

Appellant

Docket No. 2011-8006 HHS
Case No. 53284362

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.*, following the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. The Appellant, ██████████, was present for the hearing. He was represented by his ██████████. ██████████ represented the Department. ██████████, and ██████████, appeared as witnesses for the Department. ██████████ was present for the hearing.

ISSUE

Did the Department properly reduce Home Help Services (HHS) payments to the Appellant?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Appellant is a Medicaid beneficiary.
2. The Appellant is ██████████, who has been diagnosed with quadriplegia, urinary infection, and sleep apnea. (Exhibit 1, pages 6, 58)
3. The Appellant is ranked at a level 5 for all activities of daily living (ADL) and instrumental activities of daily living (IADL). (Exhibit 1, page 59)
4. On ██████████, the ██████████, ██████████, requested approval of the Appellant's case from the Department of Community Health (DCH) central office due to an increase in the pay rate for HHS providers effective ██████████. The worker requested a total of ██████████ hours or \$ ██████████ per month. (Exhibit 1,

page 21)

5. The Registered Nurse who reviewed the Appellant's case determined that the Appellant should receive ██████ hours per month or a payment of \$ ██████. The Registered Nurse reduced the time authorized for the tasks of mobility and meal preparation. (Exhibit 1, pages 12-15)
6. On ████████████████████, the Department sent an Advance Negative Action Notice, notifying the Appellant that his HHS payments would be reduced to \$ ██████, effective ████████████████████. (Exhibit 1, pages 50-52)
7. On ████████████████████, the State Office of Administrative Hearings and Rules received the Appellant's Request for Hearing. (Exhibit 1, pages 3-4)
8. On ████████████████████, the Department restored the hours for meal preparation, increasing the Appellant's chore grant to ██████ hours per month or \$ ██████. (Exhibit 1, pages 5-7)

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.

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.

The Adult Services Manual addresses the issue of assessment as follows:

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.

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.
- 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).

Further, the Appellant is authorized for Expanded Home Help Services (EHHS). The Adult Services Manual (ASM 363) addresses EHHS as follows:

Expanded Home Help Services (EHHS)

EHHS may be authorized if **all** of the following criteria are met:

- The customer is eligible for HHS.
- The customer has functional limitations so severe that the care cost cannot be met safely within the monthly maximum payment.
- The local office director/supervisory designee has approved the payment (EHHS \$334-\$999) **or** the Department of Community Health (DCH) has approved the payment (EHHS over \$1000).

All EHHS requests for approval must contain:

- Medical documentation of need, e.g., FIA-54A, and
- An updated FIA-324 and written plan of care which indicates:
 - How EHHS will meet the customer's care needs and
 - How the payment amount was determined.

Note: See Adult Services Home Page for Expanded Home Help Services Procedure Guideline, developed by the Department of Community Health.

The Appellant's case was received at central office for review on ██████████. The Program Manager requested authorization of an HHS payment of \$ ██████████. The Registered Nurse who reviewed the Appellant's case ultimately approved payment in the amount of \$ ██████████. The Registered Nurse made some adjustments to the HHS hours requested in the worker's time and task, resulting in an overall reduction in HHS hours. The Appellant's ██████████ disagrees with the changes to the requested time and task authorization for the Appellant's HHS case.

Before the Registered Nurse testified regarding any specific tasks, she explained that the reduction in this case resulted partially from a change in the hourly rate for three of the Appellant's four chore providers. More specifically, the request was made at a rate of \$ ██████████ per hour for all hours of service. However, in reality, only one of the Appellant's chore providers is paid at that rate; the other three providers are paid at a rate of \$ ██████████ per hour. She further noted that this case had not been reviewed since ██████████.

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Mobility

The worker requested 18 minutes per day or 9 hours and 2 minutes per month for mobility. (Exhibit 1, page 21) The Registered Nurse approved 5 minutes per day or 2 hours and 3 minutes per month. (Testimony of [REDACTED]). The Registered Nurse testified that she reduced the hours for mobility because the chore provider advised her that the Appellant is capable of getting around the home by himself in his power wheelchair. She stated that it was her understanding that the Appellant only needs mobility assistance occasionally, i.e., when his power wheelchair breaks down.

The Appellant's representative testified that the Registered Nurse's understanding was erroneous. She stated that they are required to assist the Appellant with mobility on a daily basis. She explained that they must assemble and disassemble the power wheelchair for the Appellant, they must attach its accessories and turn on the wheelchair, they must open doors for the Appellant, and they must push him manually when he gets stuck.

Based on the representative's testimony, the Department agreed to increase the time authorized for mobility to 15 minutes per day as requested by the Appellant and his representative.

Bowel Program

The Program Manager requested, and the Registered Nurse authorized, 2 hours per day, 5 days per week for a total of 43 hours per month for the bowel program. (Exhibit 1, page 21) The Appellant's representative requested that they be provided an additional 35 minutes per day.

The Registered Nurse testified that the bowel program includes only hands-on care, such as preparing the Appellant, inserting the suppository, digital stimulation, and clean up. She explained that the Department does not pay for the time it takes for the suppository to work. She opined that 2 hours per day, 5 days per week was probably excessive for the actual hands-on time that is required in a bowel program. She stated that generally 2 hours every other day would be considered reasonable for a quadriplegic. However, she chose not to reduce the amount requested by the Program Manager in this case.

The Appellant's representative testified that the 2 hours authorized by the Department is not sufficient to make sure the Appellant completes his bowel movements. She stated that the Appellant's bowels are very slow. She stated that to have a bowel movement, the Appellant requires an enema and digital stimulation every 10 minutes. She further testified that since the Appellant's hours have been reduced, there has been an increase in accidents and he has developed a sore. She requested an additional 35 minutes for this task.

The time authorized for the bowel program—2 hours per day, 5 days per week—is affirmed. The time requested by the Appellant's representative appears to be excessive. The Registered Nurse did not alter the amount requested by the Program Manager and that amount of time should be sufficient to meet the Appellant's needs because, as

the Registered Nurse testified, it is more time than is generally granted for a bowel program for a quadriplegic.

Medications

The Program Manager requested, and the Registered Nurse authorized, 10 minutes per day for a total of 5 hours and 1 minute per month for medications. (Exhibit 1, page 21)

The Appellant's representative requested that they be provided an additional 10 minutes per day. She testified that the Appellant is required to take 36 pills per day. The Appellant has choking and swallowing issues, so he cannot take the pills all at one time. The Appellant's representative testified that they need 5 minutes to administer the pills 4 times per day.

Based on the representative's testimony, the Department agreed to increase the time authorized for medications to 20 minutes per day as requested by the Appellant and his representative.

Eating

The Program Manager requested, and the Registered Nurse authorized, 56 minutes per day for a total of 28 hours and 6 minutes per month for eating. (Exhibit 1, page 21) The Appellant's representative requested that they be provided an additional 10 minutes per day because of his issues with choking and swallowing.

Based on the representative's testimony, the Department agreed to increase the time authorized for eating to 1 hour and 6 minutes per day as requested by the Appellant and his representative.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department's reduction of hours for bowel program was proper.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED. The Department's authorization of 2 hours per day, 5 days per week for a total of 43 hours per month for the bowel program was proper. However, pursuant to the Department's agreements on record, the following increases must be implemented: mobility must be increased to 15 minutes per day, medications must be increased to 20 minutes per day, and eating must be increase to 1 hour and 6 minutes per day.

Kristin M. Heyse
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

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CC:



Date Mailed: 3/9/2011

***** NOTICE *****

The State Office of Administrative Hearings and Rules March 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 State Office of Administrative Hearings and Rules 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.