

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

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IN THE MATTER OF:

Docket No. 2012-39356 HHS
No. [REDACTED]

[REDACTED] Case

Appellant.
_____ /

DECISION AND ORDER

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

After due notice, a hearing was held on [REDACTED]. At Appellant's request at the beginning of the hearing, [REDACTED] from Michigan Welfare Rights appeared and testified on Appellant's behalf. Appellant and [REDACTED] her care provider, also testified as witnesses. [REDACTED] Appeals Review Officer, represented the Department of Community Health. [REDACTED] Adult Services Supervisor, and [REDACTED] Adult Services Worker (ASW), from the Wayne County DHS-District 45 Office appeared as witnesses 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 [REDACTED]-year-old Medicaid beneficiary who has been diagnosed by a physician with cervical myelopathy, lumbar myelopathy, bursitis, a mastectomy, chronic pain, and a lumbar disc. Appellant also reports suffering from keloids, arthritis, and a torn rotator cuff. (Exhibit 1, page 13).
2. Appellant had been receiving 96 hours and 46 minutes of HHS per month, with a care cost of \$774.00 per month. (Exhibit 1, page 16).
3. On [REDACTED] [REDACTED] conducted a home visit with Appellant and Appellant's care provider. (Exhibit 1, page 12).
4. Based on her assessment and information provided by Appellant and

Appellant's provider during that home visit, ██████████ decided to reduce the HHS hours authorized for assistance with grooming, transferring, mobility, taking medication, and laundry. The times for assistance with other tasks would remain the same. (Exhibit 1, page 12; Testimony of ██████████)

5. Overall, Appellant's services were to be reduced to 82 hours and 17 minutes per month, with a care cost of \$658.19. (Exhibit 1, page 17).
6. On ██████████ the Department issued an Advance Negative Action Notice to Appellant indicating that her HHS payments would be reduced to \$658.19. The effective date of the reduction was identified as ██████████. (Exhibit 1, page 5).
7. On ██████████ the Department received Appellant's Request for Hearing. In that request, Appellant disputes the changes made to her HHS. (Exhibit 1, pages 4-7).
8. On ██████████ a hearing was held in this matter.
9. During the hearing, the Department's representative and witnesses agreed that the Department had failed to provide proper advance notice of the reduction. They also agreed that the reductions should not be effective prior to ██████████ and that Appellant's payments would be retroactively adjusted. (Testimony of ██████████; Testimony of ██████████; Testimony of ██████████).
10. The Department also agreed to reverse the reductions made to grooming and transferring. The changes were to be effective the day of the hearing. (Testimony of ██████████; Testimony of ██████████; Testimony of ██████████).
11. The Department further agreed to change the amount of laundry assistance from 30 minutes, one day a week, to 30 minutes, two days a week. The change would also be made effective the day of the hearing. That amount still represented a reduction from the initial amount she was receiving: 1 hour and 30 minutes, one day a week. (Testimony of ██████████; Testimony of ██████████; Testimony of ██████████).

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 101 (11-1-2011) (hereinafter "ASM 101") addresses the issue of what services are included in Home Help Services:

Payment Services for Home Help

Home help services are non-specialized personal care service activities provided under the independent living services program to persons who meet eligibility requirements.

Home help services are provided to enable individuals with functional limitation(s), resulting from a medical or physical disability or cognitive impairment to live independently and receive care in the least restrictive, preferred settings.

Home help services are defined as those tasks which the department is paying for through Title XIX (Medicaid) funds. These services are furnished to individuals who are not currently residing in a hospital, nursing facility, licensed foster care home/home for the aged, intermediate care facility (ICF) for persons with developmental disabilities or institution for mental illness.

These activities must be certified by a Medicaid enrolled medical professional and may be provided by individuals or by private or public agencies. The medical professional does not prescribe or authorize personal care services. Needed services are determined by the comprehensive assessment conducted by the adult services specialist.

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.
- Light Housecleaning.

An individual must be assessed with at least one activity of daily living (ADL) in order to be eligible to receive home help services.

Note: If the assessment determines a need for an ADL at a level 3 or greater but these services are not paid for by the department, the individual would be eligible to receive IADL services.

Example: Ms. Smith is assessed at a level 4 for bathing however she refuses to receive assistance. Ms. Smith would be eligible to receive assistance with IADL's if the assessment determines a need at a level 3 or greater. [ASM 101, pages 1-2 of 4.]

Regarding the assessment discussed above, Adult Services Manual 120 (11-1-2011) (hereinafter "ASM 120") states:

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.

HHS payments may only be authorized for needs assessed at the 3 level or greater.

An individual must be assessed with at least one activity of daily living in order to be eligible to receive home help services.

Note: If the assessment determines a need for an ADL at a level 3 or greater but these services are not paid for by the department, the individual would be eligible to receive IADL services.

Example: Ms. Smith is assessed at a level 4 for bathing however she refuses to receive assistance. Ms. Smith would be eligible to receive assistance with IADL 's if the assessment determines a need at a level 3 or greater.

See ASM 121, Functional Assessment Definitions and Ranks for a description of the rankings for activities of daily living and instrumental activities of daily living.

* * *

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. [ASM 120, pages 2-4 of 6.]

Moreover, ASM 101 also specifically states:

Services not Covered by Home Help Services

Home help services must **not** be approved 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 by another resource at the same time (for example, hospitalization, MI-Choice Waiver).
- Transportation - See Bridges Administrative Manual (BAM) 825 for medical transportation policy and procedures.
- Money management such as power of attorney or representative payee.

- Home delivered meals.
- Adult or child day care.
- Recreational activities. (For example, accompanying and/or transporting to the movies, sporting events etc.)

Note: The above list is not all inclusive. [ASM 101, pages 3-4 of 4.]

As discussed above, the only issues still in dispute in this matter are the reductions made to the assistance authorized for taking medication, mobility, and laundry. The specific disputed activities will be addressed in turn and, for the reasons discussed below, this Administrative Law Judge finds that the Department's decisions must be affirmed.

Taking Medication

██████████ reduced HHS for assistance with taking medication from 10 minutes a day, 7 days a week, to 4 minutes a day, 7 days a week. (Exhibit 1, pages 14-15). According to ██████████ she made that reduction after learning that the provider only sets up the medications and adjusting for the reasonable time schedule. (Testimony of ██████████). Appellant argues that the reduction was an error as her provider needs more time. According to Appellant, her doctor told her not to mix pills and, consequently, her provider must set up her pills from separate bottles. Appellant also needs her provider to give injections periodically and to apply a cream on her feet and legs. However, Appellant also testified that she can physically take her own medication. (Testimony of Appellant).

Appellant bears the burden of proving by a preponderance of the evidence that the Department erred. She failed to meet that burden with respect to the taking of medication. Appellant can undisputedly take her own medications and HHS is only required to assist in the preparation for taking those medications. Moreover, this Administrative Law Judge is limited to reviewing the reduction in light of the information available to the Department at the time it made its decision. Here, Appellant was not using any creams at the time the reduction was made and she did not report her injections during the assessment. Therefore, based on the information available at the time of the decision, the Department's reduction in assistance with for taking medication is sustained as it is reflective of Appellant's need for assistance.

Mobility

██████████ reduced HHS for assistance with mobility from 16 minutes a day, 7 days a week, to 10 minutes a day, 7 days a week. (Exhibit 1, pages 14-15). According to ██████████ she made that reduction because Appellant told her

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that Appellant usually needs assistance in bad weather and that she is sometimes not able to maneuver her wheelchair. [REDACTED] also testified that Appellant uses an electric wheelchair in the home and that she observed sufficient space for maneuvering around the house, with the exception of the bathroom door. She further noted that HHS are not provided outside of the home so Appellant's need for assistance in bad weather is not relevant. (Testimony of [REDACTED])

Appellant denies using an electric wheelchair inside of her home and testified that she needs her care provider to help her move her manual wheelchair while inside. She also testified that her house is not generally wheelchair accessible and she only makes small trips unassisted. Appellant also stated that she tries to stay in one place when her provider is gone. She further testified that her electric wheelchair was in the house during the reassessment, but that she only uses it outside and did not tell [REDACTED] that Appellant uses the electric wheelchair while in the home. (Testimony of Appellant).

Appellant bears the burden of proving by a preponderance of the evidence that the Department erred given its information at the time it made the reduction. Here, the reduction was only for 6 minutes per day and this Administrative Law Judge finds [REDACTED] to be credible with respect to what she was told during the reassessment. Given that testimony, Appellant has failed to meet her burden and the reduction in mobility assistance is affirmed.

Laundry

[REDACTED] reduced HHS for assistance with laundry from 1 hour and 30 minutes, 1 day a week, to 30 minutes, 1 day a week. (Exhibit 1, pages 14-15). During the hearing, however, the Department indicated it was willing to change the amount of laundry assistance from 30 minutes, 1 day a week, to 30 minutes, 2 days a week, but that it did not think 1 hour and 30 minutes, 1 day a week, was necessary. (Testimony of [REDACTED]; Testimony of [REDACTED]; Testimony of [REDACTED]). According to [REDACTED] Appellant's laundry assistance should be reduced in light of the reasonable time schedule used by the Department and Appellant's need for hands-on assistance. (Testimony of [REDACTED]).

As stated in the Functional Assessment Definitions and Ranks of Instrumental Activities of Daily Living, "Laundry" includes "Gaining Access to machines, sorting, manipulating soap containers, reaching into machines, handling wet laundry, operating machine controls, hanging laundry to dry, folding, and storing. Adult Services Manual 121 (11-1-2011) (hereinafter "ASM 121"), page 4 of 4. Given that definition, HHS for assistance with laundry does not include the times when the machines are running unattended and Appellant's HHS should instead be limited to actual physical assistance.

With respect to that assistance, the Department utilized its reasonable time schedule and there appears to be no reason to deviate from that tool. AS Supervisor [REDACTED] testified that the Department will increase assistance beyond the reasonable time tool when there are circumstances justifying an increase. For example, bed-bound d

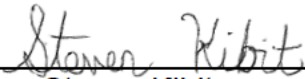
incontinent beneficiaries may require greater assistance with laundry. (Testimony of ██████████). Here, while Appellant was ranked a "5" for continence by a previous worker, she reported and testified that she has a bedside commode and that her provider will help her to the toilet when necessary. She does not wear diapers and, while she testified that she has accidents sometimes, she did not report any continence problems during the reassessment. The Department's reduction of HHS for assistance with laundry is therefore affirmed as reflective of Appellant's need for physical assistance based on the information available at the time.

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: 8/28/2012

***** 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.