

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH
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IN THE MATTER OF:

Docket No. 2012-71428 HHS
Case No. [REDACTED]

[REDACTED],

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.*, upon the Appellant's request for a hearing.

After due notice, a hearing was held on [REDACTED]. [REDACTED], guardian and choreprovider appeared on behalf of the Appellant. She had no witnesses. [REDACTED], Appeals Review Officer, represented the Department. Her witnesses were [REDACTED], ILS worker and [REDACTED], ASW supervisor.

ISSUE

Did the Department properly reduce the Appellant's Home Help Services (HHS)?

FINDINGS OF FACT

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

1. At the time of hearing the Appellant is a disabled, [REDACTED]-year-old, SSI, Medicaid beneficiary. (Appellant's Exhibit 1)
2. The Appellant is afflicted with cerebral palsy, flexion contracture bilateral-legs, mental impairment and scoliosis. (See Testimony, Appellant's Exhibit 1 and Department's Exhibit A, at pages 10 and 12)
3. On [REDACTED], the ILS worker [REDACTED] conducted an in-home review for the Appellant that led to a reduction of services effective [REDACTED]. (Department's Exhibit A, pp. 2, 6, 10)
4. On [REDACTED], the Department sent the Appellant a negative action notice informing her that HHS would be reduced owing to the in-home review conducted on [REDACTED] where it was stated: "The client is fed through a

G-tube more frequently than orally. Meal preparation has been reduced.” (Department’s Exhibit A, pp. 5 and 6)

5. The Appellant’s further appeal rights were contained therein.
6. The Appellant’s guardian and choreprovider were informed by the worker on ██████████ that housework, shopping and laundry would be reduced. They were not reduced. (Department’s Exhibit A, pp. 10, 16 and 17).
7. The Appellant’s reductions were actually the ADL of eating and the IADL of meal preparation. (Department’s Exhibit A, pp. 16 and 17)
8. The instant appeal was received by the Michigan Administrative Hearing System for the Department of Community Health on ██████████. (Appellant’s Exhibit 1)

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 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 medical professional.

COMPREHENSIVE ASSESSMENT

The DHS-324, Adult Services Comprehensive Assessment is the primary tool for determining need for services. The comprehensive assessment must be completed on all open independent living services cases. ASCAP, the automated workload management system, provides the format for the comprehensive assessment and all information must 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.
- The assessment may also include an interview with the individual who will be providing home help services.

- A new face-to-face assessment is required if there is a request for an increase in services before payment is authorized.
- A face-to-face assessment is required on all transfer-in cases before a payment is authorized.
- 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.

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.

Adult Service Manual (ASM), §120, pages 1 – 6, 11-1-2011

The Department witness testified that she was told by the Appellant's representative during the ██████████ assessment that the Appellant ate food by mouth and took water by G-tube. She said that the documentation provided for hearing was actually a previous entry from a different worker wherein it described tube feeding the majority of the time with one oral meal daily.

The Appellant's representative testified that the Appellant was tube fed "years ago" and that she reported developments in G-tube use to the ASW in charge of her daughter's case at the time. She added that she told the Department's witness [ILS worker Foster] in ████████ that the Appellant only consumed "water by G-tube." The Department's witness testified that she remembered her saying "...water" but that she interpreted that to mean "...formula." She was equivocal in her recollection of when that was communicated by the Appellant.

On review it is clear that the meal preparation and eating HHS service reduction was put in place based on some earlier assessment conducted for the Appellant – a longtime recipient of HHS services. The Department had no documentary evidence to

support the current reduction brought for appeal and the testimony of the Department's witness failed to support the negative action taken. [See Department's Exhibit A – throughout]

The reduction in HHS service was based on information and rankings from a prior assessment and a misinterpretation of events according to the Department's own witness. [See Testimony of Foster]

While a reduction in meal preparation and eating services might well be appropriate when there is duplication of effort as inferred by the Department in its argument - it still requires some proof and basis in fact to take negative action - which the Department failed to present today.

I found the Appellant's testimony credible and controlling on the issue of reporting changes in condition, oral feeding and water consumption by G-tube as allowed in policy.¹

The Administrative Law Judge finds that the comprehensive assessment was deficient. The ILS worker had no supporting witness or documentation to support or rehabilitate her testimony.

The Appellant must understand that the HHS program is not a static award of services – it is anticipated that hands-on HHS work will wax or wane depending on physical status of the recipient. Some people improve with time – some do not

Based on the record established today the Appellant has preponderated her burden of proof to demonstrate her need for HHS services. The Department's evidence did not support the testimony of its witness – whose recollections were credibly challenged by the Appellant.

¹ See ASM 120, at pp. 3 and 4, 11-1-2011

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department improperly reduced the Appellant's HHS.

IT IS THEREFORE ORDERED that:

The Department's decision is REVERSED.

IT IS FURTHER ORDERED that:

The Department reinstates the IADL of meal preparation to the level in place on [REDACTED].

Dale Malewska
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

cc: [REDACTED]

Date Mailed: 4/17/2013

***** 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.