

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

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IN THE MATTER OF:

██████████,

Appellant

Docket No. 2012-9449 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 ██████████. ██████████, Paralegal, Legal Services of Eastern Michigan, represented the Appellant. ██████████, the Appellant, appeared and testified. ██████████, caregiver, appeared as a witness for the Appellant. ██████████, Appeals Review Manager, represented the Department. ██████████, Adult Services Worker (ASW), appeared as a witness for the Department.

ISSUE

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

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 ██████████ Medicaid beneficiary. (Exhibit 2)
2. The Appellant has a history of multiple medical impairments, including diabetic neuropathy, insulin dependant diabetes, above the knee amputation right leg, coronary artery disease, asthma, kidney disease, gangrene, high blood pressure, heart failure, peripheral artery disease, incontinence and debilitation. (Exhibit 1, page 13; Exhibit 2; Exhibit A, page 1; Exhibit B)
3. The Appellant had been receiving a total of ██████████ of HHS per month for assistance with transferring, eating, mobility, bathing, grooming, dressing, toileting, medication, housework, laundry, shopping,

meal preparation, and wound care with a monthly care cost of [REDACTED]
(Exhibit 1, page 11)

4. On [REDACTED], the Appellant's doctor completed a DHS-54A Medical Needs form certifying that the Appellant has a medical need for assistance with bathing, transferring, mobility, shopping, laundry, and housework. (Exhibit 2)
5. On [REDACTED], the ASW made a visit to the Appellant's home to conduct a HHS assessment. The Appellant's caregiver was also present. (Exhibit 1, pages 8-9)
6. The ASW determined that the Appellant's functional rankings should be adjusted and the HHS hours should be reduced. The Appellant was ranked as a level 5 for meal preparation; a level 4 for housework, laundry, and shopping; a level 3 for toileting and eating; and a level 1 for bathing, grooming, dressing, transferring, continence, respiration, mobility, and medication. The HHS hours for transferring, mobility, bathing, grooming, dressing, medications and wound care were eliminated. The HHS hours for eating and toileting were reduced. The HHS hours for housework were increased. This resulted in a total of [REDACTED] of HHS per month for assistance with toileting, eating, housework, laundry, shopping, and meal preparation. (Exhibit 1, pages 11-12 and 14)
7. On [REDACTED], the Department sent an Advance Negative Action Notice to the Appellant indicating her HHS authorization would be reduced to [REDACTED] effective [REDACTED]. (Exhibit 1, pages 5-7)
8. On [REDACTED], the Appellant's Request for Hearing was received. (Exhibit 1, page 4)
9. On [REDACTED], the Appellant's doctor documented that the Appellant requires assistance with all the Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADLs) listed on a Personal Care Services Provider Log. (Exhibit A)

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 Appellant had been receiving a total of [REDACTED] of HHS per month for assistance with transferring, eating, mobility, bathing, grooming, dressing, toileting, medication, housework, laundry, shopping, meal preparation and wound care with a monthly care cost of [REDACTED]. (Exhibit 1, page 11) On [REDACTED], the Department received a DHS-54A Medical Needs form completed by the Appellant's doctor certifying that the Appellant has a medical need for assistance with bathing, transferring, mobility, shopping, laundry, and housework. (Exhibit 2)

On [REDACTED], the ASW made a visit to the Appellant's home to conduct an assessment of her HHS case. The ASW explained that this was based on her understanding that the Appellant could transfer on her own, including in/out bed, in/out

of the tub, and from her wheelchair on/off the beside commode. The ASW noted that the Appellant had a shower seat and grab bars in the bathroom, but does not use the toilet because it is too difficult for her to use unassisted or alone. The ASW understood that the Appellant can wash her body and hair unassisted. The ASW stated that the Appellant was able to dress herself, comb her own hair, trim her own fingernails, and has a podiatrist care for her toenails. The ASW observed that the Appellant has full use of her wheelchair. However, the Appellant's kitchen is too small to accommodate moving around in her wheelchair. The ASW stated that the Appellant reported she did not have any wounds on her body. The ASW stated that while the caregiver was present, she does not recall asking him any questions directly. The ASW was concerned about why the Appellant was not using her prosthesis, and called the Appellant's doctor's office regarding the Appellant not being in physical therapy for this so she can become more independent. (Exhibit 1, pages 8-9, ASW Testimony) (Exhibit 1, pages 8-9)

The ASW determined that the Appellant's functional rankings should be adjusted. The Appellant was ranked as a level 5 for meal preparation; a level 4 for housework, laundry, and shopping; a level 3 for toileting and eating; and a level 1 for bathing, grooming, dressing, transferring, continence, respiration, mobility, and medication. The HHS hours for transferring, mobility, bathing, grooming, dressing, medications and wound care were eliminated. The HHS hours for eating and toileting were reduced. The HHS hours for housework were increased. This resulted in a total of ██████████ of HHS per month for assistance with toileting, eating, housework, laundry, shopping, and meal preparation with a total monthly care cost of ██████████. (Exhibit 1, pages 11-12 and 14)

The Appellant disagrees with the reductions to her HHS case. The Appellant and her caregiver testified that she does need the assistance she previously was authorized for with transfers, mobility, bathing, toileting, grooming, dressing and medications. The Appellant explained that her home is only ██████████, and there is not enough space in the bathroom to fit her wheelchair in by the tub. Accordingly, she could not have told the ASW she is able to transfer in/out of the tub independently and she has never gotten in for a shower independently. The Appellant explained that she is not able to get on/off the toilet by herself because the riser is not securely attached. The Appellant stated that the only grab bars in the bathroom are on the wall behind the toilet and across from the toilet, which is not useful. While she is able to get on/off a bedside commode independently at times, The Appellant still needs her caregiver to empty and clean out the bedside commode. At times she has diarrhea and incontinence from taking antibiotics for prolonged periods, and may need assistance with cleaning herself after toileting. Because the bathroom does not accommodate her wheelchair, the caregiver has to bring things to the Appellant to complete grooming tasks in the bedroom, such as washing up or even just brushing her teeth. Similarly, the Appellant's bedroom is small and she cannot open her closet or dresser from her wheelchair to access her clothes. The Appellant also requires some dressing assistance with fastening clothing and putting on socks/shoes. The Appellant has problems with her eyesight, has undergone recent surgery but still requires cataract surgery in the future. Due to poor vision, the Appellant also requires some assistance with setting up medications from pill bottles and with her insulin injections. Regarding wound care, the

Appellant acknowledged that all the wounds from the amputation have healed over.
(Appellant and Caregiver Testimony)

The evidence indicates that eliminating the HHS hours for wound care and reducing the HHS hours for eating was appropriate. The Appellant no longer has wounds requiring treatments and is able to eat independently once a plate is fixed and brought to her. However, the elimination of the HHS hours for transferring, mobility, bathing, grooming, dressing, and medication as well as the reduction to the HHS hours for toileting cannot be upheld. The Appellant and her caregiver provided credible testimony regarding the Appellant's needs for hands on assistance with these activities due to her impairments and the limitations imposed by her small home. The medical documentation also supports a need for assistance with these ADLs. The Appellant's HHS hours for transferring, mobility, bathing, grooming, dressing, toileting and medication shall be reinstated at the previously authorized times retroactive to the [REDACTED] effective date.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department improperly reduced the Appellant's HHS authorization in the areas of transferring, mobility, bathing, grooming, dressing, toileting and medication.

IT IS THEREFORE ORDERED THAT:

The Department's decision is PARTIALLY AFFIRMED AND PARTIALLY REVERSED. The Appellant's HHS hours for transferring, mobility, bathing, grooming, dressing, toileting and medication shall be reinstated at the previously authorized times retroactive to the [REDACTED] effective date.

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

cc:

[REDACTED]

Date Mailed: _____ June 6, 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.