

4. The [REDACTED] assessment eliminated the ADLs of dressing and ROM exercises, mobility and then reduced the time for the chore services of; laundry, shopping. The ADL of transferring was increased by a half hour. (Department's Exhibit A, pp. 7, 8 and Department's Ex. B – throughout)
5. On [REDACTED], ASW Coy [not present for hearing] sent the Appellant an Advance Negative Action Notice (DHS-1212) informing him that HHS would be reduced (retroactively) effective [REDACTED] [REDACTED] (Department's Exhibit A, p. 6)
6. The Appellant's choreprovider acknowledged that the Appellant has a cognitive disability and that he receives services from CMH². She admitted overstating the Appellant's ability so as not to embarrass him because he is incapable of self administering ROM exercises and is constructively unable to dress himself. (See Testimony of [REDACTED])
7. The Appellant's further appeal rights were contained in the Advance Negative Action Notice.
8. The instant appeal was received by the Michigan Administrative Hearing System for the Department of Community Health on [REDACTED]. (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.

¹ Absent fraud the Department is again reminded that retroactive benefit reduction is not permitted.

² She could not recall what services were provided by CMH.

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.

....

(Emphasis supplied)

Adult Service Manual (ASM), §120, page 1 of 6, 11-1-2011.

The Department witness testified that on in-home visit she assessed the Appellant and asked his choreprovider whether hands on services were required for the Appellant's ROM exercises and whether the Appellant could dress himself. The choreprovider said that no hands on assistance was necessary for the range of motion exercising - although she later recanted that answer [at hearing] stating that it takes two people to conduct the ROM exercising safely. As for dressing the record documents the answer that the Appellant could get dressed in approximately (10) ten minutes – later amended by the family at hearing to take between 3 - 4 hours. The Appellant representative said, "...without help he'd never get to work."

The choreprovider explained that she did not want to embarrass her son – but she agreed that constructively - he would be a very slow dresser.

The following items[s] summarize the ADL reduction[s] and the ALJ's observation:

- Transferring was increased by a half hour for an unstated reason.

The following items summarize the ADL/IADL status and the ALJ's agreement:

- Laundry was properly reduced by a ½ hour. The Appellant's representative answered the ASW questions about frequency of laundry. It was reduced accordingly.
- Dressing was properly eliminated based on the testimony of the choreprovider at the time of the assessment that the Appellant could get dressed without assistance. The Department witness had no recollection of any statement that it took 3–4 hours for him to complete this task - unassisted.
- Mobility was properly eliminated as the Appellant has the means and ability to self transport.
- Shopping was properly reduced by one hour as the Appellant has the means to shop via a motorized chair.
- Range of Motion exercises were eliminated as the choreprovider told the ASW that she stands by and watches while the Appellant does the exercises.

On review of the testimony and the evidence the Administrative Law Judge finds that the comprehensive assessment was properly drawn. I thought the Appellant's choreprovider pre-hearing comments justified that elimination of the ADL of dressing and the ROM exercises for lack of hands on assistance. The Home Help Services program as applied to these activities requires, among other things, hands on assistance at a ranking of the (3) three or more. If the Appellant can get dressed in 5 - 10 minutes and can perform his ROM exercises without actual hands on assistance - the ASW was correct to eliminate those chore services.

The Appellant's representative said at hearing that the Appellant is actually worse today, in terms of spasticity, than he was at assessment. The choreprovider explained that she couched her answers to avoid embarrassing her son. She also explained today that the ROM exercises actually require (2) two people to perform them correctly – she can't assist the Appellant now – because she doesn't have a helper.

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

On review, the parties are at odds over an answer to a ROM question and the length of time it takes the Appellant to dress.

Based on the evidence, the accuracy of the assessment preponderates in the Department's favor as the ASW simply recorded and applied the answers given by choreprovider and as supported by her observations during her face-to-face

assessment. If there is new medical information concerning a change in condition³ and a need for greater hands on assistance - then the Appellant must share that information with the ASW and seek reassessment.

Based on the record established today, the Department properly assessed the Appellant and adjusted his HHS on [REDACTED] accurately following mandatory HHS assessment policy.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED that:

The Department's decision is **AFFIRMED**.

Dale Malewska
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 3-24-12

***** NOTICE *****

The State Office of Administrative Hearings and Rules 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 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 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.

³ Greater spasticity?