

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

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IN THE MATTER OF:

██████████

Appellant

Docket No. 2012-39343 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 ██████████. ██████████, representative, appeared on the Appellant's behalf. ██████████, the Appellant was present. ██████████, father and Power of Attorney, appeared as a witness for the Appellant. ██████████, Appeals Review Officer, represented the Department. ██████████, Adult Services Worker ("ASW"), and ██████████, ASW, appeared as witnesses for the Department.

ISSUE

Did the Department properly assess the Appellant's Home Help Services ("HHS") case?

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 who has been authorized for HHS.
2. The Appellant has been diagnosed with depression, self inflicted trauma, mood disorder, bipolar disorder and participated in special education. (Exhibit 1, pages 11 and 14-15)
3. The Appellant had been receiving 40 hours and 8 minutes of HHS for assistance with bathing, grooming, dressing, medication, housework, shopping, laundry, and meal preparation with a total monthly care cost of \$██████████. (Exhibit 1, page 16 and 19)
4. The Appellant's father lives in the same home with the Appellant and is his

HHS provider. (Exhibit 1, pages 16 and 19, Father Testimony)

5. On ██████████, ASW ██████████ went to the Appellant's home and completed an in-home assessment for a review of the Appellant's HHS case. The Appellant's father was present and requested an increase in the HHS payment. The ASW and the Appellant's father discussed the activities the Appellant's father provides assistance with and the scope of the activities included in the HHS program. (Exhibit 1, pages 12-13)
6. Based on the available information ASW ██████████ concluded that the Appellant requires additional assistance, such as supervision, reminding, prompting, other verbal assistance, and financial assistance. Because these types of additional assistance are beyond the scope of the HHS program, ASW ██████████ determined the Appellant's HHS authorization should remain the same.
7. On ██████████, the Department sent the Appellant an Advance Action Notice stating the provider is not in agreement with the pay so that an appeal could be filed. (Exhibit 1, pages 8-10 and ASW ██████████ Testimony)
8. On ██████████ the Request for Hearing filed on the Appellant's behalf was received by the Michigan Administrative Hearing System. (Exhibit 1, pages 4-7)

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.

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 120, 11-1-2011), pages 1-5 of 6 addresses the adult services comprehensive assessment:

INTRODUCTION

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 will be entered on the computer program.

Requirements

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.
 - Use the DHS-26, Authorization to Release Information, when requesting client information from another agency.
 - Use the DHS-1555, Authorization to Release Protected Health Information, if requesting additional medical documentation; see RFF 1555. The form is primarily used for APS cases.

- Follow rules of confidentiality when home help cases have companion APS cases, see SRM 131 Confidentiality.

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

ADLs and IADLs 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 IADLs if the assessment determined 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 specialist 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.

An assessment of need, at a ranking of 3 or higher, does not automatically guarantee the maximum allotted time allowed by the reasonable time schedule (RTS). **The specialist must assess each task according to the actual time required for its completion.**

Example: A client needs assistance with cutting up food. The specialist would only pay for the time required to cure the food and not the full amount of time allotted under the RTS for eating.

IADL Maximum Allowable Hours

There are monthly maximum hour limits on all IADLs except medication. The limits are as follows:

- Five hours/month for shopping
- Six hours/month for light housework
- Seven hours/month for laundry
- 25 hours/month for meal preparation

Proration of IADLs

If the client does not require the maximum allowable hours for IADLs, authorize only the amount of time needed for each task. Assessed hour for IADLs (except medications) must be prorated by **one half** in shared living arrangements where other adults reside in the home, as home help services are **only** for the benefit of the client.

Note: This does not include situations where others live in adjoining apartments/flats or in a separate home on shared property and there is no shared, common living area.

In shared living arrangements, where it can be **clearly** documented that IADLs for the eligible client are completed separately from others in the home, hours for IADLs do not need to be prorated.

Example: Client has special dietary needs and meals are prepared separately; client is incontinent of bowel and/or bladder and laundry is completed separately; client's

shopping is completed separately due to special dietary needs and food is purchased from specialty stores; etc.

Responsible Relatives

Activities of daily living may be approved when the responsible relative is **unavailable** or **unable** to provide these services.

Note: Unavailable means absence from the home for an extended period due to employment, school or other legitimate reasons. The responsible relative must provide a work or school schedule to verify they are unavailable to provide care. **Unable** means the responsible person has disabilities of their own which prevent them from providing care. These disabilities must be documented/verified by a medical professional on the DHS-54A, Medical Needs form.

Do **not** approve shopping, laundry, or light housecleaning, when a responsible relative of the client resides in the home, **unless** they are unavailable or unable to provide these services. Document findings in the general narrative in ASCAP.

Example: Mrs. Smith is in need of home help services. Her spouse is employed and is out of the home Monday thru Friday from 7a.m. to 7p.m. The specialist would not approve hours for shopping, laundry or house cleaning as Mr. Smith is responsible for these tasks.

Example: Mrs. Jones is in need of home help services. Her spouse's employment takes him out of town Monday thru Saturday. The specialist may approve hours for shopping, laundry or house cleaning.

Legal Dependent

Do **not** approve shopping, laundry, or light housecleaning, when a legal dependent of the client (minors 15-17) resides in the home, **unless** they are unavailable or unable to provide these services.

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In the present case, the Appellant had been receiving 40 hours and 8 minutes of HHS for assistance with bathing, grooming, dressing, medication, housework, shopping, laundry, and meal preparation with a total monthly care cost of \$██████████. The Appellant's father is his HHS provider. (Exhibit 1, page 16 and 19)

On ██████████, ASW ██████████ went to the Appellant's home and completed an in-home assessment for a review of the Appellant's HHS case. The Appellant's father was present and requested an increase in the HHS payment. ASW ██████████ and the Appellant's father discussed the activities the Appellant's father provides assistance with and the scope of the activities included in the HHS program. ASW ██████████ understood that the Appellant's father provided hands on assistance with bathing, housework, shopping, laundry, and meal preparation. ASW ██████████ also understood that the Appellant mostly needs supervision and the requested increase was for the time spent providing this type of assistance. (Exhibit 1, page 12, ASW ██████████ Testimony) Based on the available information ASW ██████████ concluded that the Appellant requires additional assistance beyond the scope of the HHS program, including supervision, reminding, prompting, other verbal assistance, and financial assistance. ASW ██████████ determined the Appellant's HHS authorization should remain the same. The ██████████ Advance Negative Action Notice did not indicate any change to the Appellant's HHS authorization. Rather it was printed to allow for an appeal of the determination to deny the requested increase in the Appellant's HHS authorization. (ASW ██████████ Testimony and Exhibits 1, pages 8-10)

This ALJ does not doubt that the Appellant's father provides many additional services beyond what is included in the HHS authorization. For example, the Appellant's father testified that he has to pay attention to the Appellant at all times or the Appellant will hurt himself. (Father Testimony) However, the HHS program does not cover 24 hour care or supervision. Accordingly, these additional needs are outside the scope of the HHS program and can not be the basis for an increase in the HHS authorization. If he has not already done so, the Appellant's father may wish to ask about other programs that may cover this type of assistance, possibly with Community Mental Health where the Appellant receives other services.

The Appellant's representative also asserted that the times authorized for the activities included in the HHS authorization were not sufficient. The Appellant's father testified that all activities with the Appellant take longer. For example, he assists with picking out clothing but has a hard time getting the Appellant to put on clothes because the Appellant would rather watch television or play games. (Father Testimony) While this ALJ understands that supervising, redirecting, guiding and prompting the Appellant to get dressed instead of watch television or play games takes more time than the Department has authorized, the HHS program does not compensate for verbal assistance. The determination not to increase the HHS authorizations for the ADLs and medication is upheld.

IADLs Subject to Proration

The Appellant's representative also asserted that the HHS hours for IADLs like shopping, laundry and meal preparation should be exempted from proration. The policy implemented by the Department recognizes that in most cases, certain tasks are performed that benefit all members who reside in the home together, specifically, the tasks of housework, laundry, shopping and meal preparation. Normally, it is appropriate to pro-rate the payment for those tasks in a shared household, as the Appellant's father would still have to clean his own home, make meals, shop and do laundry for himself if he did not reside with the Appellant. The HHS program will not compensate for tasks that benefit other members of a shared household. Accordingly, the authorized hours for these activities are to be prorated under Department policy, though exceptions can be made when there is justification for performing an activity separately for the eligible client from others in the home.

Housework

Department policy allows for a maximum of 6 hours per month for housework, which is to be prorated by one half in shared households. After proration for the shared household, ASW ██████████ authorized 3 hours and 1 minute per month for housework. (Exhibit 1, page 16) The Appellant's attorney asserted that the Appellant does not like to do housework, if housework is done around the Appellant he gets agitated and the Appellant's father has to sit with the Appellant and calm him down.

The Appellant is already at the maximum HHS authorization for housework in a shared household. There was insufficient evidence presented to establish there is a need to complete housework tasks for the Appellant separately from housework tasks for the Appellant's father to allow for an exception to the proration policy. The Appellant and his father both benefit from the completion of tasks like vacuuming or cleaning the kitchen and bathroom. The HHS authorization for housework is upheld because it is reflective of the Appellant's needs and household composition.

Shopping

Department policy allows for a maximum of 5 hours per month for shopping, which is to be prorated by one half in shared households. After proration for the shared household, ASW ██████████ authorized 2 hours and 30 minutes per month for shopping. (Exhibit 1, page 16) The Appellant's father testified that he takes the Appellant out shopping to ██████████ or the mall for about 2 hours daily for the Appellant to be able to get out and release some energy. (Father Testimony)

However, for the HHS program, shopping is defined as:

Compiling a list, managing cart or basket, identifying items needed, transferring items to home and putting them away, phoning in and picking up prescriptions. Limited to brief, occasional trips in the

local area to shop for food, medical necessities and household items required specifically for the health and maintenance of the client.

Adult Services Manual (ASM) 121, 11-1-2011, page 4 of 4.

The Appellant is already at the maximum HHS authorization for shopping in a shared household. This ALJ understands that the Appellant benefits from the daily shopping trips described by the Appellant's father. However, the bulk of the time shopping spent with the Appellant is for purposes beyond the scope of the HHS program. The HHS authorization for shopping is sustained.

Meal Preparation

Department policy allows for a maximum of 25 hours per month for meal preparation, which is to be prorated by one half in shared households. After proration for the shared household, ASW ██████████ authorized 12 hours and 32 minutes per month for meal preparation. (Exhibit 1, page 16) The Appellant's father testified that he eats separately from the Appellant due to his own heart problem. The Appellant's father stated he prepares healthy foods for the Appellant, rather than fast food. (Father Testimony)

The Appellant is already at the maximum HHS authorization for meal preparation in a shared household. There was no evidence that the Appellant has special dietary needs requiring his meals to be prepared separately to allow for an exception to the proration policy for meal preparation. The HHS authorization for meal preparation is upheld.

Laundry

Department policy allows for a maximum of 7 hours per month for laundry, which is to be prorated by one half in shared households. After proration for the shared household, ASW ██████████ authorized 3 hours and 31 minutes per month for laundry. (Exhibit 1, page 16) The Appellant's father's testimony indicated that the Appellant has some incontinence because he may forget to go to the bathroom. He also described an odor issue with the Appellant. Accordingly, there is daily laundry for the Appellant that is washed separately. (Father Testimony)

The Appellant is already at the maximum HHS authorization for this laundry in a shared household. However, there was sufficient evidence presented to establish there is a need to complete laundry the Appellant separately to support an exception to the proration policy. The HHS authorized for laundry shall be increased to 7 hours per month.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly assessed the Appellant HHS case for most activities but authorized insufficient HHS hours for laundry.

IT IS THEREFORE ORDERED THAT:

The Department's decision is PARTIALLY AFFIRMED and PARTIALLY REVERSED. The HHS hours for laundry shall be increased to 7 hours per month retroactive to the February 14, 2012 redetermination date.

/s/ _____

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

cc:



Date Signed: 8/30/2012

Date Mailed: 8/30/2012

***** 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 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.