

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

██████████,

Appellant

Docket No. 2012-39358 HHS
Case No. ██████████

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ) 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 ██████████. ██████████ appeared as representative for the Appellant. ██████████, the Appellant's mother was present. ██████████, the Appellant's step father, was present on behalf of the Appellant.

██████████, Appeals and Review Officer, represented the Department. ██████████, Adult Services Worker (ASW), appeared as witnesses for the Department.

ISSUE

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

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 ██████-year-old Medicaid beneficiary who has been participating in the Home Help Services (HHS) program.
2. The Appellant is cognitively and physically impaired. He is diagnosed with pervasive developmental disorder, intermittent explosive disorder, ADHD, combined type, mild mental retardation, mild cerebral palsy, hearing loss and seizure disorder. His I.Q. is ██████.
3. The Appellant lives with his family, including his mother, step father and 3 siblings.
4. The ASW went to the Appellant's home on ██████████ to complete an overdue comprehensive assessment.

Docket No. 2012-39358 HHS
Decision and Order

5. The ASW spoke with the Appellant at the home call while his step father was present.
6. The ASW determined the Appellant was no longer in need of assistance with dressing, medication administration, housework, shopping, laundry or meal preparation based upon the fact that the Appellant participates in a day program 2 days per week through CMH.
7. The ASW determined the Appellant still requires some assistance with grooming, however did not authorize payment assistance for this task.
8. The ASW determined the Appellant required less assistance with toileting than previously authorized, thus reduced the help from 10 hours 2 minutes per month to 2 hours 30 minutes per month.
9. The ASW reduced the payment assistance authorized for the Appellant from \$ [REDACTED] per month to \$ [REDACTED] per month.
10. On [REDACTED], the ASW sent an advance negative action notice to the Appellant informing him of the reduction in payment assistance for HHS, effective [REDACTED].
11. On [REDACTED], the Michigan Administrative Hearing System received the Appellant's request for hearing.

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.

PROGRAM DESCRIPTION

Independent living services offer a range of payment and nonpayment related services to individuals who require advice or assistance to support effective functioning within their home or the household of another.

Nonpayment Services

Nonpayment independent living services are available upon request, without regard to income or assets, to any person who needs some form of in-home service (except personal care services). Nonpayment services include all services listed below:

- Information and referral.
- Protection (for adults in need of a conservator or a guardian, but who are not in any immediate need of protective intervention).
- Money management (Referrals to Social Security Administration).
- Housing (Referrals for Section 8 Housing).

Payment Services 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. (emphasis added by ALJ)

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.

Adult Services Manual (ASM 120, 11-1-2011), pages 2-5 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 cut 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.

*Adult Services Manual (ASM) 120, 5-1-2012,
Pages 1-5 of 6*

The ASW had this case transferred to her in ██████████. Her home visit of ██████████ was her first with the Appellant and his family. At the home call she spoke with the Appellant. He told her he had a "job" and that it consisted of outside work. He told her that he works at ██████████ on a crew. He had cleaned lawn mower blades, mowed a lawn with a push mower and used a leaf blower. He also stated he had shoveled snow. He informed the worker he is able to get up and down the stairs by himself and dress himself. He also told her he could pick out his food at the grocery store. The Appellant told the worker he can take his medicine without assistance. The Appellant told the worker he requires assistance cutting his nails but can comb his own hair, brush his teeth.

The ASW was informed by the Appellant's step-father at the home call that he requires assistance with toileting. He told her he cannot and does not wipe himself adequately. Furthermore, he has 1-2 incidents of incontinence per month. There may be fecal matter on his back should this occur and he has no ability to clean it without assistance. He told her further, that ██████████ has had to bring the Appellant home from the program before due to episodes of incontinence.

At hearing the ASW repeatedly referred to the Appellant as having a job and being employed. She said she determined that his ability to learn the skills he had on the job meant the skills are transferable to self care. She said his ability to perform on the job influenced her determination about his need for HHS. Due to the ASW's testimony about the Appellant being employed and having a job, this ALJ was prompted to ask if she believed the Appellant was competitively employed. She answered she did not know what that meant.

Following the home call the worker sent an Advance Negative Action Notice informing the Appellant that all assistance for activities of daily living and instrumental activities of daily living had been eliminated except for toileting and bathing. The assistance authorized was reduced from \$ ██████████ to \$ ██████████ per month. The Appellant is contesting the determination and action.

The Appellant had his case worker through Community Mental Health represent him at hearing. The case worker stated the Appellant is cognitively and physically impaired. As a person with developmental disability such as his, he does not express himself with the truth. She indicated the statements he made at the home call are not true regarding his abilities and should not have been relied on by the worker to determine what his functional abilities are in terms of self care. She said ██████████ is a skill building

Docket No. 2012-39358 HHS
Decision and Order

program operated by a contractor for developmentally disabled people. She stated the Appellant participates 1 or 2 days per week, depending on how he feels. He does not always work in a paid capacity and in fact, if he is paid it is for 1 or 2 hours work and it is at a rate of \$ [REDACTED] per hour. He is not employed. She further stated he “most certainly” does not operate powered machinery like a lawn mower or leaf blower. He would not actually clean or sharpen lawn mower blades. She stated the only reason he does not have a legal guardian at this time is because he lives with and is under the close supervision of his parents and family. She specifically testified about his self care abilities as follows: the Appellant is unable to open medicine bottles or administer them without assistance. He does not know what they are for and lacks the dexterity and physical strength in his hands to do so. She elaborated his parents hold and physically give him his medication every day.

The Appellant’s step father testified, indicating he did not say much at the home call because the worker was directly talking to the Appellant. He did hear the Appellant tell the worker he needed help with toileting. He described the Appellant’s functional abilities and deficits. He described how and why prompting and supervising him are inadequate to accomplish many of the tasks adequately and/or safely. He elaborated that the Appellant cannot and does not wipe himself adequately after a bowel movement. Furthermore, if he should get fecal matter on his hands, he has decided to wipe it off in the toilet (due to his cognitive limitations). He has to wipe him following bowel movement and ensure he washes his hands. Furthermore, he has 1 or 2 episodes of incontinence monthly. He has to bathe when this occurs because he can have fecal matter up his back, where he is unable to reach. He will soil his clothing as a result of incontinence. He stated the Appellant has had to be brought home from his skill building program due to incontinence episodes. He further stated the Appellant has balance problems because he has one leg shorter than the other and cerebral palsy. As a result, he is able to walk but he has balance problems so it is not safe for him to bend over in the shower and wash his own legs. He helps him wash his legs and back. Furthermore, if you merely prompt him to wash his hair, he will put some shampoo on and leave it there. He said it is the same with teeth brushing. He won’t brush his back teeth. He does not perform his self care properly so he does have to provide physical assistance to some extent. He explained the Appellant cannot operate a stove safely. He may be able to minimally operate a microwave; however, he will take a corndog out still frozen or too hot. He will attempt to make a sandwich out of raw cube steak, mistaking it for lunchmeat. He said he could not buy anything but the simplest snack at a convenience store.

The worker’s testimony and narrative indicates she relied on her determination that the Appellant has sufficient ability to learn to perform self care and instrumental activities of daily living independently when deciding to eliminate almost all payment assistance. After a lengthy and considered review of the evidence of record and material definitions and policy, this ALJ finds her assessment fails to take into account the combination of mental and physical impairment affecting the Appellant’s functional status. This finding is demonstrated by her testimony and narrative notes indicating reliance upon the statements from the Appellant and overestimation of his abilities. Her testimony

persuaded this ALJ she was anxious to reduce benefits. For example, despite knowing the Appellant cannot care for his nails without assistance, the ASW eliminated payment assistance for this task. When asked to read what she wrote in her own narrative about his grooming needs she trailed off when she came upon her own sentence indicating he requires help, unwilling to read it aloud. This ALJ did take notice of that at hearing. When the ASW recognized she had made a mistake as concerns grooming, she indicated she could reinstate the authorization for grooming at the level of 5 minutes per week. There is no evidence of record she assessed the Appellant's ability to shave himself safely, one of the tasks that must be assessed for grooming. Given the known dexterity limitations he has, this ALJ would have expected to see in assessment a determination of whether the Appellant is able to shave himself or not. If he cannot, certainly 5 minutes per week is an inadequate amount of time to assist with this task, if performed daily or nearly daily. This is one example of the failure to consider the actual functional status of the Appellant.

The HHS program explicitly recognizes the needs of individuals with cognitive impairments which affect their ability to function in the community. The HHS program is designed to operate in conjunction with the programming offered by the Community Mental Health programs. This ALJ finds it is significant that the Appellant qualifies for services through the CMH. The CMH must apply the definition of a developmental disability when assessing for service eligibility. The pertinent portion is below:

(21) "Developmental disability" means either of the following:

(a) If applied to an individual older than 5 years of age, a severe, chronic condition that meets all of the following requirements:

- (i) Is attributable to a mental or physical impairment or a combination of mental and physical impairments.
- (ii) Is manifested before the individual is 22 years old.
- (iii) Is likely to continue indefinitely.
- (iv) Results in substantial functional limitations in 3 or more of the following areas of major life activity:

- (A) Self-care.
- (A) Receptive and expressive language.
- (C) Learning.
- (D) Mobility.
- (E) Self-direction.
- (F) Capacity for independent living.
- (G) Economic self-sufficiency.

(v) Reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic care,

treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated.

MCL 330.1100a

When considering the significant level of need identified in the developmentally disabled criteria contained in the Mental Health Code, this ALJ finds the department's determination of need was inadequate to address his functional needs. The testimony from the CMH caseworker and the Appellant's provider is found credible and reliable in this case. The determination of the ASW is not supported by the evidence of record found most persuasive or reliable. The ASW eliminated medication assistance despite the fact that the Appellant is physically unable to open a pill bottle. He is cognitively unable to administer it for himself because he does not know what it is for. She eliminated shopping assistance and meal preparation because he told her he could pick up food off a shelf and place it in the cart and carry it into the house. This is not all of what shopping assistance and meal preparation entail. It is not established he could actually access food without physical assistance from his family. The ASW offered testimony supporting her assessment by indicating the Appellant merely needs prompting and supervision to accomplish all of the own care she eliminated. This was refuted by the worker from the CMH and the provider's testimony. It is not appropriate to eliminate assistance with his instrumental activities of daily living simply because a person could stand next to him all day and tell him what to do. Having to stand next to a person all day and tell them exactly what to do, or re-do and tell them not to wipe their hand in a toilet is not mere prompting and supervision as envisioned by the HHS program. The program is supportive of people whose cognitive limitations render mere prompts or supervision inadequate to ensure their safety and that they live a dignified life.

The credible evidence of record establishes the Appellant's functional needs include limited aspects of dressing for help with tasks requiring more dexterity than the Appellant has i.e. buttons and/or some zippers, as well as bathing, toileting, medication, grooming, shopping, laundry, meal preparation and light housework at the level established by the reasonable time and task guide found in ASCAP.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department has improperly reduced the Appellant's payment assistance for the Home Help program.

IT IS THEREFORE ORDERED that:

The Department's decision is REVERSED. The Department is hereby ordered to reinstate the Appellant's HHS assistance at its previous level dating back to the effective date on the Advance Negative Action Notice.

\S\ _____

Jennifer Isiogu
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 8/6/12

***** 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.