

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH
P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 334-9505

IN THE MATTER OF:

██████████,

Appellant

Docket No. 2012-47362 HHS
Case No. ██████████
Docket No. 2012-53786 HHS
Case No. and ██████████

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 ██████████. The Appellant was represented by her choreprovider, ██████████. Her witness was ██████████. ██████████, R.N., represented the Department. Her witnesses were ██████████, ASW supervisor and ██████████, ASW.

PRELIMINARY MATTER

- At the outset of hearing petitions 2012-47362 and 2012-53786 were consolidated on the ALJ's motion – with the concurrence and request of the Appellant.
- Additionally, 2012-53898 HHS [Appellant's Exhibit #2] was dismissed by the ALJ as this demonstrative exhibit, [photocopy of "soiled bedding"] was incorrectly received and noticed by the Department as a petition for hearing. It was in fact evidence for the instant consolidated hearing.

ISSUE

Did the Department properly assess the Appellant for purposes of the Home Help Services (HHS) program?

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 ██████ year-old, SSI-Medicaid beneficiary. (Appellant's Exhibit 1)
2. The Appellant is a double below the knee amputee afflicted with Hepatitis B and C, DM, Pancreatitis, Gastritis, HTN, stage-2 pressure sores, Glaucoma

and Hypothyroidism. The Appellant's representative emphasizes that the Appellant requires extensive hands on assistance with the ADL of toileting owing, in part, to her diagnosis of Pancreatitis.¹ (Appellant's Exhibit #1, p. 8 and Department's Exhibit A, pp. 10, 11 and 45) *But see*, Testimony of Agnes Hitchcock.

3. On ██████████, the ASW conducted a face-to-face, in home assessment which resulted in the reduction of HHS from a previous amount of \$ ██████████ per month to \$ ██████████ per month. (Department's Exhibit A, pp. 2, 13, 15, 42 and 43)²
4. The ██████████ assessment resulted in application of mandatory shared household policy and the resulting reduction for the IADL of meal preparation. The IADL of housework was increased as were the ADLs of bathing, grooming, and dressing. The remaining ADLs and IADLs were not disturbed. See Testimony of ASW Samples.³
5. On ██████████, ASW Samples sent the Appellant an Advance Negative Action Notice (DHS-1212) informing her that HHS would be reduced effective ██████████ (Department's Exhibit A, pp. 2, 6 and 7)
6. The Appellant's further appeal rights were contained in the Advance Negative Action Notice.
7. The Appellant's request to revisit her request for an increase for "all services" was agreed to by the parties at the threshold of hearing. (See Testimony and Appellant's Exhibit #1, page 8)
8. The instant appeal was received by the Michigan Administrative Hearing System for the Department of Community Health on ██████████. (Appellant's Exhibit #1, page 8)

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

¹ It was noted in the testimony that the Appellant was non-compliant with medications.

² A previous attempted home visit resulted in a brief interruption of HHS payment – which was reinstated by the ASW on an unknown date. See Testimony of ASW Samples and Departments' Exhibit A, pp. 39 and 42.

³ The Department provided no exemplar of prior time and task disbursement.

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.

....

(Emphasis supplied)

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

EXPANDED HOME HELP SERVICES

Expanded home help services exists if all basic home help services eligibility criteria are met and the assessment indicates the client's needs are so extensive that the cost of care cannot be met within the monthly maximum payment level of \$549.99.

When the client's cost of care exceeds \$1299.99 for any reason, the adult services specialist must submit a written request for approval to the Michigan Department of Community Health (MDCH).

Follow the Procedures for Submitting Expanded Home Help Requests found on the Adult Services Home Page. Submit the request with all required documentation to:

Michigan Department of Community Health
Long Term Care Services Policy Section
Capital Commons Building, 6th Floor
P.O. Box 30479
Lansing, MI 48909

MDCH will provide written documentation (DCH-1785) of approval. A new request must be submitted to the Michigan Department of Community Health whenever there is an increase in the cost of care amount. A new request is not require[d] If the cost of care decreases below the approved amount set by MDCH. ASM *Supra*

The Department witness testified that on in-home visit she assessed and observed the Appellant. She testified that the Appellant has wounds on her hands that do not heal – so they are frequently “wrapped in gauze.” A wound-care nurse no longer comes to the home – so the necessity for assistance with dressing (buttoning, fastening, zippers, combing, brushing, etc.) while hands are covered in gauze resulted in an increase for the ADLs of dressing and grooming.

Owing to the extreme loss of bowel control and resulting clean-up - the ASW increased time for the ADL of bathing. The related task of laundry (clean-up of feces-covered items) was already at the maximum according to both ASW Samples and ASW supervisor, Numley.

The Appellant's representative testified that "all services needed to be increased" – but did not understand that most of the ADLs and IADLs awarded were daily services. She agreed with the new evaluations for meal preparation and shopping.

She added that the ADL of mobility needed to be increased owing to the Appellant's inherent risk of falling – as a double amputee.

She had no suggested alternative "times" except for the ADL of toileting - which she opined to be necessary in excess of 6-hours a day owing to the frequent number of uncontrolled bowel movements - with each episode taking between 45 minutes or one hour to resolve. Interestingly, her witness who was sequestered during the representative's testimony, opined that each bowel movement episode took a half hour to resolve – although the individual chores were identical. Accordingly, her estimate was half that of the Appellant's representative on direct testimony.

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

- There were no reductions in personal care services. The ADLs of bathing, grooming and dressing were increased, respectively from 18 minutes a day to 30 minutes a day, from 5 days a week to seven days a week and from 6 days a week to 7 seven days a week. The remaining ADLs were not disturbed. The ADL of toileting might have merited further scrutiny by the ALJ but even the Appellant's witnesses could not agree on the necessary amount of time. The ASW testimony proved that much was accounted for in the other personal care services of bathing, housework and laundry. If the Appellant ever becomes compliant with her medication, her pancreatitis symptoms might improve – or not. Then a resulting change of condition or reassessment could follow.

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

- Laundry was properly left in tact - above recommended maximums for a shared household - owing to the Appellant's unique circumstance and increased need for this daily service. The remaining IADLs were already at maximum levels when the mandatory shared household policy was put in place. The result was a reduction by half – owing to the number of adults living in the same residence. [The Appellant's representative said they were not appealing the shared household ruling at this time. She was instructed to consult with the ASW following the hearing on how that policy is enforced – for future reference].

On review of the testimony and the evidence, the Administrative Law Judge finds that the comprehensive assessment was properly drawn. The most pointed debate came on the issue of the time allotment for toileting. The Appellant's presentation was marred by the fact that her own witness did not concur with her testimony that the Appellant required 6 (plus) hours for toileting each day. Her witness estimated 3-hours. Such

figures, given the existing HHS thresholds established under ASM policy, suggest the necessity for a review by way of Expanded Home Help Services.⁴ [The mechanics of addressing an EHHS assessment appear above].

Much of the Appellant's bowel exigency and resulting clean-up appears to come from medication non-compliance. Not taking medication is obviously not a solution. The ASW cannot compel a HHS recipient to take medications – but she would be acting within her authority to eliminate that time and task for non-compliance – based on her comprehensive review.

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 the present physical status of the recipient. Some people improve with time – some do not.

Based on the evidence and the credible testimony of ASW Samples, the accuracy of the assessment preponderates in the Department's favor as the ASW applied the answers given by choreprovider and supported those conclusions with her observations during her face-to-face assessment.

Based on the record established today, the Department properly assessed the Appellant and adjusted her HHS effective on [REDACTED] following mandatory HHS assessment and shared household 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**.

IS\

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

⁴ The Appellant's representative testified that the existing care plan was improperly drawn from the beginning.

[REDACTED]
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cc:

[REDACTED]

Date Mailed: 9/14/12

***** 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.