

**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) 373-4147

IN THE MATTER OF:

██████████,

Appellant

Docket No. 2012-55485 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 ██████████. ██████████, choreprovider, appeared on behalf of the Appellant who was present and testified. ██████████ RN, Appeals Review Officer, represented the Department. Her witness was ██████████, ASW.

PRELIMINARY MATTER

The Department's witness testified that he used the prior time and task assessment in making his reduction on the instant assessment. The document was requested by the Appeals Review Officer for entry into the record.

It was not received.

ISSUE

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

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 afflicted with end stage kidney disease, HTN, DM, bipolar disorder, CVAx6 [sic], blood clots, vertigo, vision problems, neuropathy and diarrhea – he attends dialysis 3 times a week and he is a below the knee double amputee. (See Testimony, Appellant's Exhibit 1 and Department's Exhibit A, at page 11 and Joint Ex. B)

3. On ██████████, the ASW conducted an in-home 6-month review of the Appellant that led to a reduction of services effective ██████████. (Department's Exhibit A, pp. 6, 12)
4. On ██████████, the ASW sent the Appellant a DHS 1212 Advance Negative Action Notice informing him that HHS would be reduced owing to the in-home redetermination conducted on ██████████. (Department's Exhibit A, pp. 2, 6)
5. The Appellant's further appeal rights were contained therein.
6. The instant appeal was received by the Michigan Administrative Hearing System for the Department of Community Health on ██████████. (Appellant's Exhibit 1)
7. On ██████████ the ASW sent the Appellant's physician a DHS 54A Medical Needs form which was returned on ██████████. (Joint Exhibit B)

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.

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 5, 5-1-2012.

The Department witness testified that he reduced the Appellant's HHS based on the Appellant's statement that he only needed assistance with toileting owing to diarrhea – "once a month."

This was the only reduction made by the ASW and it reduced the Appellant's total cost of care from \$██████████ per month to \$██████████ per month. The ASW explained [without his promised supporting documentation] that the Appellant previously received 26-minutes daily for assistance with toileting. He testified further that the Appellant needed help getting off and on the toilet and that he had diarrhea – although he said he did not remember if he asked how long that task actually took.

In factoring the assessment to take into account the Appellant's claim of once monthly diarrhea – the ASW said he always asks the Appellant what the doctor is doing for the condition. Then he testified on direct examination that he could not recall what the doctor was doing for the Appellant. When asked by the ARO how long the toileting task took per week (in consideration of the diarrhea statement) - he said he did not ask the Appellant.

The Appellant's choreprovider/representative testified that the Appellant has constant diarrhea and that he must utilize the toilet - with extensive clean-up duty at least twice a day. The choreprovider said he has "...to clean his butt – because he can't...and then clean the toilet and the soiled clothing" because of the frequency and intensity the of bowel accident. He added that these accidents were usually the result of the Appellant

waiting too long for assistance. The choreprovider testified that this was a 30-minute process.

I found the Appellant's testimony credible and controlling on the issue of need for daily assistance with the task of toileting. I thought the choreprovider's accounting of toileting frequency carried greater weight than that of the ASW who neglected to ask the Appellant about how long his bowel episodes took or how long he spent on the toilet when diarrhea struck, what the doctor was doing for him or how he got on to the toilet for that matter.

The ASW testified that he made the reduction based on the Appellant's testimony, but then acknowledged his own lack of usual follow-up questioning on current medical care that for some reason he failed to inquire of Appellant [REDACTED].

The lack of receipt of the prior time and task document relied upon by the ASW in addition to the ASW's apparent reliance on an after acquired DHS 54A Medical Needs form¹ – I find to have caused a failure of proof in the Department's [REDACTED] negative action – at least based on this record.

The in-home assessment is the Department's opportunity to observe and report – not merely record answers from the HHS recipient - otherwise face-to-face assessments would not be required under policy.

Accordingly, I found much of the ASW's testimony regarding the assessment of the reduced ADL of toileting to be unpersuasive. He acknowledged that he could not remember if he asked relevant questions as posed by the ARO on direct examination and that he failed to follow-up with his usual practice of further medical investigation with this Appellant.

The following item summarizes the ADL/ reduction and the ALJ's disagreement:

- Toileting was reduced even though the clear weight of the evidence showed that the Appellant needs hands-on assistance every day (sometimes twice a day) to use the toilet for a bowel movement - with or without the aggravating feature of diarrhea. I found the choreprovider's documentation at Appellant's Exhibit #1 and his explanation of events under oath to be controlling on the issue of toileting assistance. I would reinstate toileting to its former ranking² and its time allocation of 26-minutes a day.

¹ The ALJ did not draw the conclusion reached by the ASW that the Appellant was being treated successfully with Imodium – as that reference was clearly lined out on the document. In any event the Appellant had already appealed the negative action

² Unknown in this record.

On review of the testimony and the evidence the Administrative Law Judge finds that the comprehensive assessment was deficient. First, based on the unconvincing testimony of the Department's witness it was clear that the Appellant had more toileting debility than noted.

Next, the face-to-face comprehensive assessment is supposed to be the ASW's opportunity to observe and report - not to merely record answers. A comprehensive assessment requires more attention to detail and timely receipt of supporting evidence.

I thought the Appellant made a convincing argument for reinstating the ADL of toileting. He had a candid witness in his choreprovider, [REDACTED].

The Appellant must understand that the HHS program is not a static award of services – it is anticipated that hands-on work will wax or wane depending on physical status of the recipient. Some people improve with time – others do not.

Based on the record established today the Appellant has preponderated his burden of proof to demonstrate his need for HHS services at their previous levels in effect on [REDACTED].

The Department's evidence did not support reduction of the ADL of toileting.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED that:

The Department's decision is REVERSED.

IT IS FURTHER ORDERED that:

The Department shall reassess the Appellant within 90-days receipt of this Decision and Order.

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

cc: [REDACTED]

[REDACTED]
Docket No. 2013-55485 HHS
Hearing Decision & Order

Date Mailed: 3/28/2013

***** 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.