

**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:

████████████████████

Docket No. 2013-13453 HHS
Case No. ██████████

Appellant

_____ /

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 ██████████. Appellant appeared and testified on his own behalf. ██████████, Appellant's provider, appeared as a witness for Appellant. ██████████, Appeals Review Officer, represented the Department of Community Health. (DCH or Department). ██████████, Adult Services Worker and ██████████, Adult Services Manager appeared as witnesses for the Department.

ISSUE

Did the Department properly deny Appellant's request for additional 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. Appellant is a ██████ year-old Medicaid beneficiary who has been diagnosed with quadriplegia, multiple decubitus, depression, and chronic pain. (Exhibit A, p 11).
2. Appellant is totally paralyzed from the chest down and he is totally dependent on the care of others for everything. He has limited range of motion with his arms, but has no fine motor skills. (Exhibit A, p 12; Testimony).

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3. Appellant previously had an administrative hearing in [REDACTED] during which he withdrew his appeal when the Department agreed to seek additional HHS for Appellant. (Exhibit A, pp 19-20). Following the appeal, Appellant's HHS hours were increased from 12 hours per day to 16 hours per day. (Exhibit A, pp 10, 11, 16; Testimony).
4. On [REDACTED], the Department's Adult Services Worker (ASW) had a face to face meeting with Appellant. The Appellant indicated that 16 hours per day of HHS was not sufficient, per his doctor's orders, and he requested 24 hour HHS. (Exhibit A, p 16).
5. Appellant lives alone and has few natural supports. (Testimony).
6. On [REDACTED], the Department sent Appellant a Services and Payment Approval Notice indicating that he was approved for 16 hours of HHS per day, which equates to a monthly allotment of \$ [REDACTED]. The effective date of payments for 16 hours per day was [REDACTED]. (Exhibit A, pp 9-10).
7. On [REDACTED], the Michigan Administrative Hearing System (MAHS) received Appellant's Request for Hearing. In that request, Appellant stated that he wanted a hearing with respect to his HHS payment. (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 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 Manuals 361 (6-1-07) (hereinafter "ASM 361") and Adult Services Manual 363 (9-1-08) (hereinafter "ASM 363") address the issues of what services are included in Home Help Services and how such services are assessed:

Home Help Payment Services

Home Help Services (HHS, or personal care services) are non-specialized Personal Care Service activities provided under ILS to persons who meet eligibility requirements.

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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.

Personal care services which are eligible for Title XIX funding are limited to:

Activities of Daily Living (ADL)

- Eating.
- Toileting.
- Bathing.
- Grooming.
- Dressing.
- Transferring.
- Mobility.

Instrumental Activities of Daily Living (IADL)

- Taking medication.
- Meal preparation/cleanup.
- Shopping for food and other necessities of daily living.
- Laundry.
- Housework.

(ASM 361, page 2 of 5)

COMPREHENSIVE ASSESSMENT

The Adult Services Comprehensive Assessment (DHS-324) is the primary tool for determining need for services. The comprehensive assessment will be completed on all open cases, whether a Home Help Payment will be made or not. ASCAP, the automated workload management system provides the format for the comprehensive assessment and all information will 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.

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- A face-to-face contact is required with the client in his/her place of residence.
- An interview must be conducted with the caregiver, if applicable.
- Observe a copy of the client's social security card.
- Observe a picture I.D. of the caregiver, if applicable.
- 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.
- Follow specialized rules of confidentiality when ILS cases have companion APS cases.

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

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- Laundry
- Light Housework

Functional Scale ADL's and IADL's 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.

Note: HHS payments may only be authorized for needs assessed at the 3 level or greater.

Time and Task

The worker 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.

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

These are **maximums**; as always, if the client needs fewer hours, that is what must be authorized. Hours should continue to be prorated in shared living arrangements.

(ASM 363, pages 2-4 of 24)

Necessity For Service

The adult services worker is responsible for determining the necessity and level of need for HHS based on:

- Client choice.
- A complete comprehensive assessment and determination of the client's need for personal care services.
- Verification of the client's medical need by a Medicaid enrolled medical professional. The client is responsible for obtaining the medical certification of need. The Medicaid provider identification number must be entered on the form by the medical provider. The Medical Needs form must be signed and dated by one of the following medical professionals:
 - Physician.
 - Nurse practitioner.
 - Occupational therapist.
 - Physical therapist.

(ASM 363, page 9 of 24)

Services not Covered by Home Help Services

Do **not** authorize HHS payment for the following:

- Supervising, monitoring, reminding, guiding or encouraging (functional assessment rank 2);
- Services provided for the benefit of others;
- Services for which a responsible relative is able and available to provide;
- Services provided free of charge;

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- Services provided by another resource at the same time;
- Transportation - See Program Administrative Manual (PAM) 825 for medical transportation policy and procedures.
- Money management, e.g., power of attorney, representative payee;
- Medical services;
- Home delivered meals;
- Adult day care.

(ASM 363, pages 14-15 of 24)

The Appellant qualifies for Expanded Home Help Services (EHHS). According to ASM 120, EHHS services exist 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 \$ [REDACTED]. If the cost of care exceeds \$ [REDACTED] per month, the ASW must request approval from the Michigan Department of Community Health (MDCH). ASM 120, p 5.

As discussed above, Appellant has been approved for EHHS for 16 hours per day for a monthly HHS payment amount of \$ [REDACTED]. Appellant subsequently appealed that decision, alleging that he requires additional time with respect to the tasks he was approved for.

The Department's Adult Services Worker (ASW) testified that the MDCH approved Appellant for 16 hours of HHS per day and that she adjusted Appellant's Time and Task to reflect this. The Department's ASW ranked Appellant a 5 (requires extensive hands on assistance) for the ADL's and IADL's of bathing, grooming, dressing, toileting, transferring, eating, mobility, medication, housework, laundry, shopping, and meal preparation. The Department's ASW ranked Appellant a 1 for continence and a 1 for respiration. (Exhibit A, p 13). In her notes, the Department's ASW indicated:

Emphasis was given to the ADL's and Complex Care needs, to reflect increased care for wound care, transferring, bathing, specialized skin care, etc. due to doctor's orders for rotation/movement every two hours per day.

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Customer has a catheter that needs to be changed 3-6 times a day. He also requires wound care for bed sores. The dressings need to be changed when he has a bowel movement. The customer also participates in range of motion exercises 3 times per day. Customer also needs to be turned while in bed to prevent bed sores.

[Since] 2010 he has dressings on his wounds to be changed. He has stage 4 sores on buttock. They are kept clean when his diapers are changed during the day. At night he wears a condom catheter for the urine. (Exhibit A, pp 13-14]

The Department's ASW opined that, given Appellant's significant needs, he might be better cared for in a long term care facility.

The Department's Adult Services Manager (ASM) testified that she submitted the request to the MDCH for EHHS for Appellant. The Department's ASM indicated that she has not received formal, written approval yet from MDCH, but that she did receive verbal approval to increase Appellant's EHHS to 16 hours per day. The Department's ASM testified that she believes that 16 hours per day of EHHS is fair for Appellant as it meets all of his needs, including being turned or moved every 2 hours. The Department's ASM pointed out that HHS is for hands-on assistance, not for times when Appellant is sleeping or resting. With regard to Appellant's doctor indicating that he needs 24 hour per day care, the Department's ASM testified that doctor's orders do not control the HHS program and that the medical needs form is a guideline used by social work professionals to do their own assessment.

Appellant testified that he requires 24 hours assistance per his doctor's orders. (Exhibit 1). Appellant pointed out that on page 14 of Exhibit A, the Department's ASW did not check that he needed the Complex Care needs of Eating or Feeding Assistance, Bowel Program, or Suctioning, when he does need care in those areas. Appellant testified that the Department can point to no policy that says he is not entitled to 24 hour per day care because there is no such policy. Appellant testified that his only informal support, his [REDACTED] died in [REDACTED] and that it took the Department two years to acknowledge the fact. Appellant indicated that he does not want to go into a long-term care facility and that the Department cannot force him into one. The Appellant testified that the fact that the Department says he should go into long-term care though proves his point that he requires 24 hour per day care. Appellant testified that he cannot be left home alone for 8 hours a day as he cannot even get himself a drink of water.

In response to Appellant's testimony regarding page 14 of Exhibit A, Appellant's Complex Care needs, the Department's ASW testified that she addressed those needs under the Time and Task allotments found on page 13.

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Appellant's provider testified that Appellant is incapable of doing anything for himself. Appellant's provider indicated that he has been staying the night at Appellant's place because if anything were to happen when Appellant was left alone, he would die.

Based on the evidence presented, Appellant has failed to prove, by a preponderance of the evidence, that he requires more HHS than he was approved for. While Appellant indicated that his doctor has ordered that he receive 24 hour per day care, the HHS program is not run from doctor's orders. The HHS program requires social workers to perform a comprehensive assessment to determine what a customer's hands on needs are with regard to his or her ADL's and IADL's. Here, the 16 hours per day authorized is sufficient to meet those needs. Appellant will not be left alone for extended periods of time and he can control when his providers come and go. As the Department's ASM pointed out, HHS is not designed to provide monitoring for customers when they are sleeping or resting. The hours allotted will also Appellant to be turned at least every two hours, as his doctor ordered, if not more often.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly denied Appellant's request for additional HHS.

IT IS THEREFORE ORDERED THAT:

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

/s/

Robert J. Meade
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

cc:



Date Mailed: February 6, 2016

***** 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 must 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.