

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

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IN THE MATTER OF:

██████████,

Appellant

Docket No. 2013-17116 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 ██████████. The Appellant was represented by choreprovider ██████████. ██████████ represented the Department. Her witness was ██████████.

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 female, Medicaid/Medicare beneficiary. (Appellant's Exhibit 1)
2. The Appellant is afflicted with CVA with right sided paralysis, HTN, depression, speech impairment and incontinence. (Department's Exhibit A, p. 7).
3. On ██████████, the ASW conducted a face-to-face, in-home assessment, which resulted in the reduction of HHS from the prior total cost of care at ██████████ at 70:21 hours per month to a new total cost of care at ██████████ at 41:41 hours per month. (See Department's Exhibit A, pp. 15 and 16)
4. On ██████████ the ASW interviewed the Appellant's choreprovider by telephone. (Department's Exhibit A, p. 12)
5. On ██████████ the ASW sent the Appellant a DHS 1212 Advance Negative Action Notice reducing the Appellant's HHS effective ██████████. The Appellant's further appeal rights were contained therein. (Department's Exhibit A, p. 8)

6. The ██████████ assessment eliminated the ADL of bathing, because the Appellant said she did not want it and added the ADL of transferring to accommodate the many movements from the Appellant's wheelchair to other seating. The IADL of medication was eliminated because the Appellant said she took her own medication. The ADL of grooming was reduced to reflect a once weekly grooming regiment versus a 5-day a week version. Meal preparation was reduced from 7 days a week to 5 days week to more accurately reflect what was happening in the home. The remaining items were not disturbed. (See Departments Exhibit A – throughout)
7. At hearing the Appellant's choreprovider testified that she forgot to mention on telephone interview that she applied prescription lotion/cream from the dermatologist to the Appellant's back and shoulders – an activity the one-handed Appellant could not do. She added that the Appellant requires significant hands-on assistance with medication management as she cannot manage the typical childproof tamper resistant packaging for her medications. She added that this process requires hands on assistance – as well as prompting, observing and managing. The Choreprovider also remarked that the Appellant has the mental capacity of a 4-year old. (See Testimony of ██████████)
8. The instant appeal was received by the Michigan Administrative Hearing System for the Department of Community Health on ██████████ (Appellant's 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 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.

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Adult Service Manual (ASM), §120, page 1 of 5, 5-1-2012

The Department witness testified that on in-home visit she assessed the Appellant without the participation of the choreprovider, who was contacted 10-days later by telephone. During the in-home assessment the Appellant told the ASW that she did “not want” the bathing ADL, used less grooming and took her own medication. The ASW, based on her in-home observations, reduced grooming and meal preparation while adding the ADL of transferring owing to the many movements the Appellant must make from wheelchair to other surfaces.

At hearing, the Appellant’s choreprovider said she forgot to reference the application of dermatologist prescribed medication which she administered to the Appellant’s back and shoulders – a task the Appellant cannot do because of her paralysis. She also said that the Appellant might be able to swallow her pills – but she cannot access the tamper-proof security containers owing to her paralysis. She said the medications also involve monitoring and management - but requires significant hands-on effort from the choreprovider.

On review, I found the choreprovider’s testimony credible – in particular regard to the IADL of medication. There is much for a constructively one-armed person to accomplish and I believe she needs the hands-on assistance referenced by the

choreprovider at hearing. But, the ASW should have examined the Appellant's blithe statement that she took her own medications with greater suspicion – particularly given her paralysis and unrebutted “one hand” statement in her petition. [See Appellant's Exhibit #1]

The following item summarizes the ADL elimination and the ALJ's observation:

- Bathing was correctly eliminated based on the Appellant's plain statement. I am suspicious about this item; however, I have no evidence to refute the Appellant's comment. On reassessment I believe the ASW would be well served to revisit this ADL with a more searching inquiry.

The following item summarizes the IADL elimination and the ALJ's disagreement:

- Medication was incorrectly eliminated because allowance was not made for the Appellant's inability to open tamper resistant medications or her inability to administer dermatologic medications to her own back – owing to her paralysis.

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

- Grooming was properly reduced to reflect the actual level of such activity on a weekly basis.

The following item summarizes the IADL reduction and the ALJ's agreement:

- Meal Preparation was properly reduced based on the credible testimony of the ASW to more accurately reflect what was going on in the home.

The following items summarize the ADL addition and the ALJ's agreement:

- Transferring was properly introduced into the HHS mix as the Appellant demonstrated many necessary moves from her wheelchair to other seating.

On review of the testimony and the evidence the Administrative Law Judge finds that the comprehensive assessment was not properly drawn. The Appellant's IADL of medication required a more searching inquiry from the ASW. Given the Appellant's obvious paralysis the ASW should have had the Appellant demonstrate just how she opened a tamper-resistant medication packaging beyond simply accepting her statement that she “takes her own medications.”

I thought the Appellant's representative was honest and credible when she testified that the Appellant was capable of additional meal preparation action - even though she

makes "a big mess." Furthermore, I thought her statement that the Appellant's condition has not improved over time was an important consideration as was her comment that the Appellant's "mental state [depression] is bad." She also commented on the need for supervised, hands-on medication set-up to prevent the Appellant's pill confusion.

It is clear to this reviewer that the Appellant requires hands-on assistance with grooming, dressing, transferring, medication [application and administration], housework, laundry, shopping and meal preparation. While I found no evidence to rebut the ASW's conclusion that bathing was no longer necessary - on reassessment - I believe this item should be reviewed and further documented - if again found in the negative.

With the exception of the medication IADL task elimination - which I reverse - I found the remaining adjustments properly reached by the ASW. The facts and the testimony support those conclusions.

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 present physical status or the present medical need of the recipient. Some people improve with time - some do not.

Based on the evidence, the accuracy of the assessment does not preponderate in the Department's favor as the ALJ was persuaded by the evidence that the Appellant - at the time of assessment - could not physically handle the administration of her medication regiment - without hands-on assistance. Further investigation was necessary. The IADL of medication is necessary.

Based on the record established today, the Department improperly assessed the Appellant.

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, in part, and AFFIRMED, in part.

IT IS FURTHER ORDERED that:

The IADL of medication be reinstated at the time and task allocation in effect on [REDACTED].

/s/

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

cc:

[REDACTED]

Date Mailed: 2/28/2013

***** 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.