

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

██████████,

Appellant

Docket No. 2013-6675 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 ██████████. ██████████, parents, represented the Appellant. ██████████, the Appellant. ██████████, Manager Appeals Section, represented the Department. ██████████, Adult Services Worker ("ASW"), appeared as a witness for the Department.

ISSUE

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

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 Medicaid beneficiary who had been authorized for HHS.
2. The Appellant has been diagnosed with Duchenne muscular dystrophy. (Exhibit 1, page 13)
3. The Appellant had been receiving a total of 124 hours and 43 minutes of HHS for assistance with bathing, grooming, dressing, toileting, transferring, mobility, medication, housework, shopping, eating or feeding, bowel program, suctioning, specialized skin care, range of motion exercises, wound care, and laundry with a monthly care cost of \$██████████. The Appellant's mother is his HHS provider. (Exhibit 1, page 21)
4. On ██████████, the ASW went to the Appellant's home and completed an in-home assessment for a review of the Appellant's HHS case. The Appellant's mother was present. This home visit was this

ASW's first time assessing the Appellant's case. The ASW understood that a bowel program, which included enemas, was no longer completed with the Appellant because he has loose bowels. The ASW further understood that the Appellant no longer had any bed sores requiring wound care or specialized skin care. (Exhibit 1, pages 11-12; ASW Testimony)

5. Based on the available information, the ASW concluded that the Appellant's HHS hours for housework, transferring and range of motion exercises should be increased and the HHS hours for the bowel program, wound care, and specialized skin care should be eliminated. This resulted in an overall reduction to the Appellant's HHS authorization totaling 114 hours and 44 minutes with a monthly care cost of \$ [REDACTED]. (Exhibit 1, pages 11 and 22; ASW Testimony)
6. On [REDACTED], the Department sent the Appellant an Advance Action Notice, which informed him that effective [REDACTED] the HHS case, would be reduced to \$ [REDACTED]. (Exhibit 1, pages 5-9)
7. On [REDACTED], the Appellant's request for hearing was received by the Michigan Administrative Hearing System. (Exhibit 1, page 3)
8. The Appellant has continued to receive specialized skin care, including turning at night, to prevent bed sores as well as wound care, including dressing changes, for the tracheotomy and the PEG tube stoma. (Father Testimony)

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 Manual (ASM) 101, 11-1-11, addresses HHS payments:

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.

*Adult Services Manual (ASM) 101,
11-1-2011, Page 1 of 4.*

Adult Services Manual (ASM) 105, 11-1-11, addresses HHS eligibility requirements:

Requirements

Home help eligibility requirements include all of the following:

- Medicaid eligibility.
- Certification of medical need.
- Need for service, based on a complete comprehensive assessment (DHS-324) indicating a functional limitation of level 3 or greater for activities of daily living (ADL).
- Appropriate Level of Care (LOC) status.

*Adult Services Manual (ASM) 105,
11-1-2011, Page 1 of 3*

Adult Services Manual (ASM 120, 5-1-2012), 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-27, 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 home help services 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.

Home help payments may only be authorized for needs assessed at the 3 level ranking 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 instrumental activities of daily living 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 hours 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 adjoined 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.

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

Certain services are not covered by HHS. ASM 101 provides a listing of the services not covered by HHS.

Services not Covered by Home Help

Home help services must **not** be approved for the following:

- Supervising, monitoring, reminding, guiding, teaching 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 (such as house cleaning, laundry or shopping).
- Services provided by another resource at the same time (for example, hospitalization, MI-Choice Waiver).
- Transportation - See Bridges Administrative Manual (BAM) 825 for medical transportation policy and procedures.
- Money management such as power of attorney or representative payee.
- Home delivered meals.
- Adult or child day care.
- Recreational activities. (For example, accompanying and/or transporting to the movies, sporting events etc.)

Note: The above list is not all inclusive.

The Appellant had been receiving a total of 124 hours and 43 minutes of HHS for assistance with bathing, grooming, dressing, toileting, transferring, mobility, medication, housework, shopping, eating or feeding, bowel program, suctioning, specialized skin care, range of motion exercises, wound care, and laundry with a monthly care cost of \$██████████. The Appellant's mother is his HHS provider. (Exhibit 1, page 21)

On ██████████ the ASW went to the Appellant's home and completed an in-home assessment for a review of the Appellant's HHS case. The Appellant's mother was present. This home visit was this ASW's first time assessing the Appellant's case. The ASW had reviewed documentation from the prior ASW indicating the reasons for the HHS authorizations for the complex care tasks. The bowel program included administering enemas, and the HHS hours authorized for specialized skin care and wound care were for treating bed sores. From the information reported during the ██████████ assessment, the ASW understood that a bowel program was no longer completed with the Appellant because he has loose bowels. The ASW further understood that the Appellant no longer had any bed sores requiring specialized skin care or wound care. (Exhibit 1, pages 11-12; ASW Testimony) Based on the available information, the ASW concluded that the Appellant's HHS hours for housework, transferring and range of motion exercises should be increased and the HHS hours for the bowel program, wound care, and specialized skin care should be eliminated. This resulted in an overall reduction to the Appellant's HHS authorization totaling 114 hours and 44 minutes with a monthly care cost of \$██████████. (Exhibit 1, pages 11 and 22; ASW Testimony)

The Appellant disagrees with the elimination of HHS hours for the bowel program, specialized skin care and wound care. The Appellant's father testified he and the Appellant's mother are RNs. The Appellant's father questioned why the bowel program was removed because the Appellant is incontinent of bowels, has to be changed and is on a blue pad. The Appellant's father read the description of specialized skin care in the Department's evidence packet and stated that massage and turning and night to prevent the development of pressure sores is provided for the Appellant. Regarding wound care, the Appellant's father testified that multiple dressing changes are completed daily for the opening in the Appellant's neck for the tracheotomy and the stoma for his PEG tube. Additionally, he noted the ASW's note was incorrect regarding suctioning as this is completed related to the tracheotomy not the PEG tube. (Father Testimony; Exhibit 1, pages 17 and 20)

The Department provided sufficient evidence to support the elimination of HHS hours for the bowel program. The Department did not change the HHS authorization for toileting assistance, which would cover changing incontinence products and clean up. A bowel program is typically authorized for administering stool softeners, suppositories or enemas. (Exhibit 1, page 20) The ASW testified that the prior ASW's notes indicated the HHS hours for the bowel program in the Appellant's case, 20 minutes three days per

week, were authorized for administering enemas. The information provided to the ASW during the [REDACTED] home visit, and the hearing testimony, indicate administration of enema is no longer being done. Rather the Appellant has bowel incontinence and loose stools. (Exhibit 1, pages 11 and 15; ASW Testimony; Father Testimony) The elimination of HHS hours for a bowel program is upheld.

However, the evidence does not support the elimination of HHS hours for specialized skin care and wound care. The ASW understood that the Appellant no longer had bed sores requiring treatment at the time of the [REDACTED] home visit. (Exhibit 1, page 11; ASW Testimony) Specialized skin care includes massage and turning or re-positioning to prevent the development of bedsores. (Exhibit 1, page 20) The Appellant's father credibly testified that massage and turning at night are done for the Appellant. Further, while the Appellant no longer has bed sores requiring treatment, he still requires multiple daily dressing changes for the opening in his neck for the tracheotomy and the stoma for his PEG tube. (Father Testimony) It appears that the prior ASW may not have documented these other needs for wound care, in addition to the prior treatment for the pressure sores. Further, it appears the Appellant's parents may not have realized this ASW, who was new to the Appellant's case, was not aware of these other wound care needs. The determinations to eliminate the HHS hours for specialized skin care and wound care are reversed.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly eliminated the HHS hours for the bowel program but improperly eliminated the HHS hours for specialized skin care and wound care based on the available information.

IT IS THEREFORE ORDERED THAT:

The Department's decision is PARTIALLY AFFIRMED and PARTIALLY REVERSED. The elimination of HHS hours for the bowel program is upheld. The eliminations of the HHS hours for specialized skin care and wound care are reversed. The HHS hours for specialized skin care and wound care shall be reinstated retroactive to the [REDACTED] effective date.

Colleen Lack
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 3/6/2013

***** 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.