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

[redacted],

Docket No. 14-017726-HHS
Case No. [redacted]

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 Appellant's request for a hearing.

After due notice, a hearing was held on [redacted]. [redacted], Appellant's mother and caregiver, appeared and testified on Appellant's behalf.

[redacted], Appeals Review Officer, represented the Department of Community Health (DCH or Department). [redacted], Adult Services Worker (ASW), [redacted], Appellant's current ASW, and [redacted], RN, Complex Care Coordinator, appeared as witnesses for the Department.

ISSUE

Did the Department properly reduce 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. Appellant is a 34 year-old Medicaid beneficiary, born November 13, 1980, who has been diagnosed with cerebral palsy, seizures, gastroesophageal reflux, scoliosis, and ulcerative colitis. Appellant is wheelchair bound and unable to speak. (Exhibit A, pp 6, 13, 19; Testimony)

2. Appellant lives with his mother, who is also his caregiver. Appellant also has a legal guardian. (Exhibit A, p 19; Testimony)

3. Appellant uses the following adaptive equipment: feeding tube, wheelchair, special bed, suction machine and nebulizer machine. (Exhibit A, p 19; Testimony)

4. On [redacted], the Department's ASW conducted a home visit with Appellant and his mother/caregiver to conduct a six month review for continued HHS. (Exhibit A, pp 18-19; Testimony)

5. During the six month review, the ASW learned that Appellant was receiving 64 hours per month of Community Living Services (CLS) through [redacted]. Appellant's mother is also his paid CLS provider. (Exhibit A, p 19; Testimony)

6. Appellant has been receiving CLS services for many years. Appellant received more CLS services prior to enrolling in HHS. When Appellant enrolled in HHS, his CLS services were reduced significantly. (Testimony)

7. On [redacted], the Department's ASW conducted a phone conference with the Department's R.N., Complex Care Coordinator and Appellant's Case Manager from [redacted] to discuss the possibility that Appellant's CLS services through [redacted] were duplicating services Appellant was receiving through HHS. The parties reviewed Appellant's needs, his Individual Plan of Service (IPOS) from [redacted] to see what services CLS was authorized to cover and compared those services to what Appellant was receiving through HHS. (Exhibit A, p 15; Testimony)

8. Following the six month review, the [redacted] phone conference, and conferences with the Department's R.N., Complex Care Coordinator, the Department's ASW reduced Appellant's HHS from 258 hours and 18 minutes per month (a total monthly care cost of $[redacted]) to 197 minutes and 8 minutes per month (a total monthly care cost of $[redacted]). Some of the reduction was due to the fact that the Department determined that Appellant's HHS services were being duplicated by his CLS services and some of the reduction resulted from the Department learning more about Appellant's needs through review of his IPOS. (Exhibit A, pp 29-32, 34-35, 37-40; Testimony)

9. On [redacted], the Department's ASW sent a letter to DCH explaining the proposed reduction and requesting approval of the reduction, per policy, because Appellant was receiving Expanded Home Help Services. (Exhibit A, pp 33-34, 51-52, 63-64; Testimony)

10. On [redacted], the Department's ASW issued an Advance Action Notice to Appellant indicating that his HHS would be reduced to $[redacted] per month. (Exhibit A, pp 8-10)

11. On [redacted], the Department's Long Term Care Policy Section Manager issued a Memorandum approving the reduction in Appellant's HHS, as required per policy. (Exhibit A, p 41, 51-52; Testimony)

12. On [redacted], the Michigan Administrative Hearing System (MAHS) received the request for hearing filed in this matter. (Respondent's Exhibit A, page 5).

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 101 (12-1-2013) (hereinafter "ASM 101") addresses what services are included in HHS:

> 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.
>
> Home help services are defined as those tasks which the department is paying for through Title XIX (Medicaid) funds. These services are furnished to individuals who are **not** currently residing in a hospital, nursing facility, licensed foster care home/home for the aged, intermediate care facility (ICF) for persons with developmental disabilities or institution for mental illness.
>
> These activities **must** be certified by a Medicaid enrolled medical professional and may be provided by individuals or by private or public agencies. **The medical professional**

does not prescribe or authorize personal care services. Needed services are determined by the comprehensive assessment conducted by the adult services specialist.

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.

An individual must be assessed with at least one activity of daily living (ADL) 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 IADL's [sic] if the assessment determines a need at a level 3 or greater.

Note: If an individual uses adaptive equipment to assist with an ADL, and without the use of this equipment the person would require hands-on care, the individual must be ranked a level 3 or greater on the functional assessment. This individual would be eligible to receive home help services.

Example: Mr. Jones utilizes a transfer bench to get in and out of the bathtub which allows him to bathe himself without the hands-on assistance of another. The adult services specialist must rank Mr. Jones a 3 or greater under the functional assessment. Mr. Jones would be eligible to receive home help services.

Assistive technology would include such items as walkers, wheelchairs, canes, reachers, lift chairs, bath benches, grab bars and handheld showers.

Expanded Home Help Services (EHHS)

Expanded home help services can be authorized for individuals who have severe functional limitations which require such extensive care that the service cost must be approved by the adult services supervisor/local office designee and/or the Department of Community Health.

Complex Care

Complex care refers to conditions requiring intervention with special techniques and/or knowledge. These complex care tasks are performed on clients whose diagnoses or conditions require more management. The conditions may also require special treatment and equipment for which specific instructions by a health professional or client may be required in order to perform.

- Eating or feeding assistance.
- Catheters or leg bags.
- Colostomy care.
- Bowel program.
- Suctioning.
- Specialized skin care.
- Range of motion exercises.
- Dialysis (In-home).
- Wound care.
- Respiratory treatment.
- Ventilators.
- Injections.

* * *

Services not Covered by Home Help

- 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). A responsible relative is defined as an individual's spouse or a parent of an unmarried child under age 18.
- 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.

ASM 101, pages 1-3, 5 of 5

Moreover, with respect to the coordination of HHS with other services, Adult Services Manual 125 (12-1-2013) (hereinafter "ASM 125") provides in part that:

PARTNERSHIPS

The adult services specialist has a critical role in developing and maintaining partnerships with community resources.

To facilitate these partnerships the adult services specialist will:

- Advocate for programs to address the needs of clients.
- Emphasize client choice and quality outcomes.
- Encourage access and availability of supportive services.

Work cooperatively with other agencies to ensure effective coordination of services.

Coordinate available resources with home help services in developing a services plan that addresses the full range of client needs.

Do **not** authorize home help services if another resource is providing the same service at the same time.

COMMUNITY MENTAL HEALTH (CMH)

Many clients are eligible for home help services while also receiving mental health services through the local community mental health services programs (CMHSPs) or prepaid inpatient health plans (PIHPs).

Clients, who live in unlicensed settings where home help services may be provided, include:

- Own home/apartment, either living alone or with roommates or relatives. Client's name is on the lease or mortgage.

- Home of a family member.

- Supported independent setting (formerly called SIP homes). The lease is held by an individual that is **not** also the provider of other services such as home help.

Note: The instrumental activities of daily living in shared living arrangements must be divided by **one half**.

Community Living Supports (CLS)

Clients eligible for home help services authorized by the adult services specialist may also receive community living supports (CLS) authorized through the local community mental health services pro-grams (CMHSPs) or prepaid inpatient health plans (PIHPs). Community living supports

> services cannot **duplicate** or **replace** home help services.
>
> The client's plan should clearly identify where home help and community living supports are **complementary**. The adult services specialist determines the need for services based on the DHS-324, Adult Services Comprehensive Assessment. If the client is receiving the maximum authorized through home help and still needs additional hands on assistance with some ADLs and/or IADLs in order to remain at home, community living supports services may be used to provide that additional direct physical assistance which exceeds the cost of care determined by DHS.
>
> Unlike home help, which only provides direct hands on assistance with ADLs and IADLs, community living supports services typically are used for skill development or supervision. In such situations, the use of both home help and community living supports is permitted as the services are different and not a duplication.
>
> The community living supports services may not supplant or replace home help services. The client must exhaust all available services under home help before seeking community living supports.
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> *ASM 125, pages 1-2 of 12*
> *(Underline added by ALJ)*

The Department's witnesses testified that the authorized HHS for bathing, grooming, toileting, transferring, housework, laundry, shopping, and range of motion exercises remained the same for Appellant following the six month review.

The Department's witnesses testified that the time allocated for dressing was reduced from 12 hours and 32 minutes per month to 9 hours and 2 minutes per month because part of Appellant's authorized CLS allowed for CLS to be used to teach Appellant to become more independent with dressing. The Department's witnesses rationalized that the reduction was appropriate because some of the teaching would certainly be done during the regular times Appellant was dressed each day.

The Department's witnesses testified that the time allocated for mobility was reduced from 22 hours and 34 minutes per month to 15 hours and 3 minutes per month because Appellant has a specially built wheelchair for his daily use and is moved about the residence periodically in the wheelchair. The Department's witnesses indicated that the time allocated for mobility is the maximum under the reasonable time schedule for

expanded HHS and there was no justification for providing time above the maximum in Appellant's case.

The Department's witnesses testified that the time allocated for medications was increased from 10 hours and 2 minutes per month to 15 hours and 3 minutes per month (the maximum allowed) because the Department learned during this review that Appellant's medications need to be pureed and administered through his feeding tube.

The Department's witnesses testified that the time allocated for suctioning was reduced from 40 hours and 8 minutes per month to 15 hours and 3 minutes per month because the Department learned that much of the time allocated for suctioning was being used for percussion (tapping) on Appellant's back, not for actual suctioning. The Department's witnesses also noted that time for percussion (tapping) on Appellant's back was contained in his Individual Plan of Service (IPOS) through [redacted] and would, therefore, be covered by his CLS hours.

The Department's witnesses testified that the time allocated for meal preparation and eating was combined into one category, eating or feeding assistance and the overall hours allocated were reduced from 72 hours and 44 minutes per month to 55 hours and 11 minutes per month. The Department's witnesses noted that Appellant is fed a recipe of food pureed in a blender, which is prepared once each day and which is enough for his six feedings per day. The Department's witnesses indicated that the meals are warmed up in a water bath and then fed through a syringe into Appellant's feeding tube. The Department's witnesses testified that they determined that the time allocated was sufficient to prepare the food once in the blender each day and then administer the food to Appellant six times per day.

Appellant's mother/caregiver testified that she is not being paid for time allocated in the IPOS designated for occupational therapy (OT), physical therapy (PT), a nutritionist, or a caseworker, but rather is only paid for time allocated for CLS. Appellant's mother/caregiver testified that CLS has nothing to do with the hands on care Appellant receives through HHS, but rather is designed to allow her time to take Appellant out into the community. Appellant's mother/caregiver also testified that the Habilitation Waiver only covers durable medical equipment and, likewise, has nothing to do with the hands on care she provides to Appellant. Appellant's mother/caregiver questioned why the Department mentioned OT, PT, the nutritionist, the caseworker and the Habilitation Waiver in the negative action notice when those services having nothing to do with the hands on care she provides to Appellant.

Appellant's mother/caregiver also questioned why the overall time for meal preparation and eating was reduced given that the two separate categories were simply combined into one new category. Appellant's mother/caregiver testified that the time it takes her to prepare Appellant's food in a blender, heat it up, and feed him six times per day has not changed since the last assessment.

Appellant's mother/caregiver testified that Appellant urinates through his diaper numerous times per day and needs to, therefore, have his clothes changed numerous times per day. Appellant's mother indicated that Appellant is not just dressed and undressed once per day, so the time for dressing should not have been reduced based on the fact that CLS time is also allocated to help her teach Appellant to be more independent with dressing.

Appellant's mother/caregiver testified that Appellant needs suctioning many more times per day than she is allocated for under HHS and, in reality, he really needs 24 hour per day care because he cannot do anything for himself. Appellant's mother/caregiver pointed out that if Appellant had to be placed in a facility, it would cost the State much more to care for him than it does now. Appellant's mother/caregiver testified that she feels like her HHS caseworkers are working against her, not for her. Appellant's mother/caregiver indicated that she has a very full plate taking care of Appellant and that the Department is making her life more miserable by reducing her hours. Appellant's mother/caregiver testified that she is not asking for more than Appellant is entitled to.

Appellant's mother/caregiver testified that Appellant received CLS for many years before he was authorized for HHS and that his CLS hours were reduced dramatically once he was enrolled in HHS.

In response, the Department's RN, Complex Care Coordinator testified that Appellant has exhausted the maximum amount of HHS he is entitled to so, under policy, he should now seek additional CLS hours, or other supports through [redacted], if he requires more assistance.

Based on the evidence presented, Appellant has failed to prove by a preponderance of the evidence that the reduction in his HHS was improper. The Department spent considerable time analyzing Appellant's case and coordinating his care with [redacted], as required by policy. As indicated above, policy indicates that "[c]ommunity living supports services cannot duplicate or replace home help services." Here, it is clear that some of Appellant's CLS services were duplicating the services Appellant was receiving through HHS and the reduction in HHS was proper. Contrary to Appellant's mother's assertion, CLS hours are not solely used for community integration; they can be used for reminding, cueing, and teaching. Here, part of Appellant's CLS hours are for teaching him to be more independent with dressing, and that is certainly a duplication, in part, of Appellant's allocated HHS for dressing. Likewise, Appellant was allocated CLS in his IPOS to assist with percussioning on his back, which is a duplication of time allocated for suctioning.

It is also clear that the Department followed proper procedure for increasing and decreasing Appellant's HHS in other areas where they determined changes to be appropriate. For example, the Department properly reduced Appellant's HHS for eating and feeding assistance once they reviewed his IPOS and obtained a better idea of what

exactly was involved in preparing Appellant's meals and administering those meals to him through his feeding tube.

Appellant's mother should be commended for the extensive, around the clock care she provides to her son. However, policy dictates that services cannot be duplicated and the Department had no choice, upon discovering that fact, but to reduce Appellant's services accordingly. The Department is also required, during each review, to thoroughly analyze the HHS being authorized and to make changes when necessary.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED THAT:

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

Robert J. Meade
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Community Health

Date Signed: [redacted]

Date Mailed: [redacted]

RJM[redacted]

cc: [redacted]

***** 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.