

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES**

P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 373-4147

IN THE MATTER OF:

████████████████████

Docket No. 15-001881 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 telephonic hearing was held on ██████████. Appellant appeared and testified. Appellant's father and caregiver, ██████████, appeared as a representative and witness on behalf of Appellant.

████████████████████, Appeal Review Officer appeared on behalf of the Department of Community Health (Department). ██████████, Adult Protective Services Worker, and ██████████, Adult Protective Services Specialist appeared as witnesses for the Department. The witnesses for the Department indicated that there is no protective services issue(s) herein, but that each is cross-trained and functions in more than one job capacity.

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 ██████ year-old Medicaid beneficiary, who is a beneficiary of the Medicaid and SSI programs. Appellant's diagnosis is Fredrick's Ataxia, a progressive disease. (Exhibit A.41)
2. On ██████████, the Department worker conducted an in-home review with Appellant and his caregiver. Department progress notes state that Appellant reported needing help in the shower but does not need assistance getting washed; that he does not need assistance with hands on assistance with toileting; and does need assistance with transferring. Appellant has a portable commode in his room and at times must be picked up and taken upstairs to use the rest room. (Exhibit A.16).

3. On ██████████ the services worker sent Appellant an Advance Negative Action Notice informing him that his grant will be reduced effective ██████████. (Exhibit A.7) Appellant's services for bathing and grooming were reduced, toileting removed, and transferring added. (Exhibit A.8-9). (Exhibit A, pp 8-10; Testimony)
4. Appellant's grant went from 70:13 to 58:36; from \$ ██████████ to \$ ██████████. (Exhibit A).
5. Appellant needs assistance with bathing/cleaning up every day even though he does not take a bath every day. Appellant's father must carry Appellant up the stairs at time for the rest room. Appellant cannot empty his commode due to Fredrick's Ataxia. Appellant requested range of motion hours for exercise due to the degenerative nature of the Fredrick's Ataxia. (Exhibit A; Testimony).
6. The worker in this case was not familiar with Appellant's diagnosis.
7. Appellant's Request for Hearing was received by the Michigan Administrative Hearing System on ██████████ stating in part that Appellant requires assistance washing up every day even though he does not shower every day, assistance every with flossing, with lotion, assistance with the shower chair, stretching his legs and hips and back. (Exhibit A.4-5).

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 (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 1of 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.

Necessity For Service

The adult services specialist is responsible for determining the necessity and level of need for home help services based on:

- Client choice.
- A completed DHS-324, Adult Services Comprehensive Assessment. 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 if the assessment determines a need at a level 3 or greater.

- Verification of the client's medical need by a Medicaid enrolled medical professional via the DHS-54A. The client is responsible for obtaining the medical certification of need; see ASM 115, Adult Services Requirements.

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

Adult Services Manual (ASM 120, 5-1-2012), pages 1-4 of 5 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 adjoining 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.

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Decision and Order

The issue here is whether the Department properly reduced Appellant's HHS hours. The Department argues that the assessment did not support keeping bathing and grooming at 7 days per week; and did not support toileting at all. The Department indicated that transferring was added.

Appellant argues that he does need assistance with bathing and grooming 7 days per week. Specifically, that even though he may not get in the shower all 7 days, he nevertheless needs assistance with 'washing up', needs assistance with his teeth, flossing, and lotion. In addition, Appellant needs to be carried at times. Appellant also cannot pick up and empty a commode of waste due to the nature of his disease, he would not be able to carry it without spilling it. Appellant also requested time for stretching and range of motion exercise.

In response, the Department indicated that Appellant lifts weights and rides a stationary bike. However, Appellant's caregiver credibly testified that Appellant is not a "weight lifter", and, does not exercise on a stationary bike as one would observe most individuals in a gym. Appellant's caregiver testified that Appellant does not have control of his muscles. Moreover, due to the regressive and degenerative nature of his disease, Appellant is encouraged to engage in strengthening. Appellant's representative testified that this muscle wasting is reflected in the fact that Appellant must be carried up the stairs at times, and does not have control of his muscles/body to carry a commode of waste without spilling it.

Upon questioning, the worker indicated that she was not familiar with Appellant's diagnosis, and did not know the nature of the disease and/or how it affects bodily control.

After a careful review of the credible and substantial evidence of record, this ALJ finds that the Department failed to meet its burden of going forward to adequately explain the assessment done was in compliance with DHS policy and procedure. The Department was not appraised of Appellant's medical condition, and the written assessment as well as the Department testimony did not reflect an understanding of Appellant's medical diagnosis and its impact on Appellant's functional abilities to engage in ADLs and IADLs. In addition, the Department's explanation of the addition of transferring is inconsistent with a reduction of bathing and grooming, and removal of toileting.

Based on the evidence presented, this ALJ finds that the assessment was not in compliance with policy and procedure and did not support the reductions in the HHS grant. The Department's reduction is reversed.

It is noted that the Department should follow through with Appellant's request for range of motion hours.

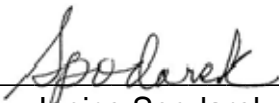
DECISION AND ORDER

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

IT IS THEREFORE ORDERED THAT:

The Department's decision to reduce Appellant's HHS hours is REVERSED.

Appellant shall have his prior grant reinstated, and issued any supplemental benefit, until or unless the Department conducts a full, in-person reassessment.



Janice Spodarek
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Community Health

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

cc: [REDACTED]

JS/ [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.