

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

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IN THE MATTER OF:

Docket No. 2011-37876 HHS
Case No. 1056005828

██████████,

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's granddaughter and chore provider, appeared and testified on Appellant's behalf. ██████████, Appeals Review Officer, represented the Department of Community Health. ██████████, Independent Living Services (ILS) Specialist at the ██████████ County DHS-HHS Office, appeared as a witness 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 hypertension (HTN), diabetes, neuropathy, renal failure, rheumatoid arthritis (RA), gout, and sleep apnea. (Exhibit 1, page 8).
2. In ██████ or ██████████, Appellant applied for HHS. (Exhibit 1, pages 12-13).
3. As part of the application and assessment process, ILS Specialist ██████████ conducted a home visit with Appellant and ██████████ on ██████████. (Exhibit 1, pages 12-13; Testimony of ██████████).
4. Appellant lives with ██████████ and ██████████'s two minor children. (Exhibit 1, page 7; Testimony of ██████████).
5. Following the home visit, Appellant's application for HHS was granted. Appellant was to receive 64 hours and 52 minutes of HHS per month, with a total monthly care cost of \$██████████. (Exhibit 1, page 11).

6. On [REDACTED], [REDACTED] sent Appellant a Services and Payment Approval Notice. The start date of payments was [REDACTED]. (Exhibit 1, pages 5-6).
7. On [REDACTED], the Department received Appellant's Request for Hearing. In that request, Appellant states that she wants a hearing with respect to her HHS payment. (Exhibit 1, page 4).

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.

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.
- 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
- 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;
- 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)

As discussed above, after a home visit on ██████████, Appellant was approved for 64 hours and 52 minutes of HHS per month, with a total monthly care cost of \$██████████. (Exhibit 1, page 11). Appellant subsequently appealed that decision on the basis that she requires additional time with respect to the tasks she was approved for. (Exhibit 1, page 4; Testimony of ██████████). Each of those tasks will be addressed in turn and, for the reasons discussed below, this Administrative Law Judge finds that the Department's decisions must be affirmed.

Bathing

In this case, ILS Specialist ██████████ allocated 18 minutes a day, 4 days a week, of HHS for assistance with bathing. (Exhibit 1, page 11). According to ██████████, she ranked Appellant a "4" and allocated the time for Appellant because Appellant's conditions made it too painful or her too weak to complete the tasks herself. (Exhibit 1, page 9; Testimony of ██████████). ██████████ also testified that 18 minutes a day is the time recommended by the reasonable time schedule (RTS) used by the Department and that Appellant is bathed 4 times a week. (Testimony of ██████████). Appellant's representative testified that she bathes Appellant 4 times a week and that it takes 45 minutes each time. (Testimony of ██████████). She also testified that Appellant needs assistance in getting in-and-out of the bathtub and in washing her lower body. (Testimony of ██████████). Appellant can wash her upper body herself. (Testimony of ██████████).

The exact assistance that Appellant requires is undisputed and, given the limited physical assistance actually required by Appellant in bathing, Appellant cannot meet her burden of showing that the Department erred. Appellant offers no reason why assistance with getting in-and-out of the bathtub and washing Appellant lower body requires more than 18 minutes a day. That was the reasonable amount of time suggested by the RTS used by ██████████ and there is no basis from departing from that recommended time here. Accordingly, this Administrative Law Judge finds that the Department's decision with respect to bathing must be affirmed as reflective of Appellant's need for physical assistance with that task.

Grooming

ILS Specialist ██████████ allocated 10 minutes a day, 7 days a week, of HHS for assistance with grooming. (Exhibit 1, page 11). As testified to and written in her notes by ██████████, she ranked Appellant a "4" and allocated the time for Appellant because Appellant's conditions made it too painful or her too weak to complete the tasks herself. (Exhibit 1, page 9; Testimony of ██████████). ██████████ also testified that 10 minutes a day

is the time recommended by the RTS used by the Department. (Testimony of ██████████). According to Appellant's representative, however, she spends 20-25 minutes per day grooming Appellant. (Testimony of ██████████). That time includes assistance with putting on lotion, combing Appellant's hair, and getting Appellant's teeth together. (Testimony of ██████████).

As stated by policy, 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." ASM 363, page 3 of 24. Here, ██████████ used those factors and allocated 10 minutes per day, as recommended. Appellant's representative only described three things she does with respect to grooming and there is no indication as to why those activities should take more than 10 minutes a day. Appellant has therefore failed to meet her burden of proof and the Department's decision with respect to grooming is sustained.

Dressing

ILS Specialist ██████████ allocated 14 minutes a day, 7 days a week, of HHS for assistance with dressing. (Exhibit 1, page 11). ██████████ testified and wrote in her notes that the time authorized for assistance with dressing was based on the fact that Appellant could not dress herself without some assistance. (Exhibit 1, page 9). She also ranked Appellant a "3" with respect to dressing for the same reason. (Exhibit 1, page 9; Testimony of ██████████). ██████████ further testified that 14 minutes a day is the time recommended by the RTS used by the Department. (Testimony of ██████████). Appellant's representative testified that the time it takes to dress Appellant depends on whether Appellant is having a good day or a bad day. (Testimony of ██████████). If it is a good day, it takes 15 minutes to dress Appellant. (Testimony of ██████████). If it is a bad day, it can take up to 1 hour to dress Appellant. (Testimony of ██████████).

According to ██████████, Appellant's bad days require additional time for assistance with dressing because she has to get Appellant to cooperate or leave her alone for some time in order for Appellant's blood sugar level to rise. (Testimony of ██████████). However, HHS expressly exclude supervising, monitoring, reminding, guiding or encouraging. ASM 363, pages 14-15 of 24). In light of what HHS actually entails, *i.e.* hands-on physical assistance, Appellant has failed to meet her burden of demonstrating by a preponderance of evidence that the Department erred. The Department's allocation of 14 minutes per day of HHS for assistance with dressing is sustained as it is reflective of Appellant's need for physical assistance with that task.

Toileting

ILS Specialist ██████████ allocated 22 minutes a day, 7 days a week, of HHS for assistance with toileting. (Exhibit 1, page 11) Appellant and her representative do not dispute that authorization and Appellant's representative testified that, while Appellant previously requires such assistance, Appellant is now independent with respect to toileting. (Testimony of ██████████). The Department indicated that it will likely terminate assistance with toileting in the future, but, based on the information it had at the time, its prior decision with respect to toileting is affirmed.

Transferring

Regarding the task of transferring, the amount of HHS time authorized is clearly sufficient and the Department's decision is sustained. ILS Specialist ██████████ allocated 8 minutes a day, 7 days a week, of HHS for assistance with transferring. (Exhibit 1, page 11). Appellant's representative testified that Appellant sleeps in a recliner and stays in the recliner most of the day. (Testimony of ██████████). Appellant's representative also testified that, while Appellant requires assistance in transferring out of the recliner, it only takes 10 seconds to assist Appellant out of the chair each time. (Testimony of ██████████). Given how little actual physical assistance Appellant requires, the authorized time is sufficient even if Appellant makes frequent trips out of her recliner.

Mobility

With respect to mobility, Appellant was authorized for 16 minutes a day, 7 days of assistance. (Exhibit 1, page 11). Appellant does not appear to dispute that amount as her representative testified at first that Appellant can move around by herself. (Testimony of ██████████). Appellant's representative did testify later that Appellant requires assistance using stairs, but she also testified that Appellant does not use the stairs much and there is no suggestion that the authorized time is insufficient. (Testimony of ██████████). The Department's decision regarding mobility is therefore affirmed.

Taking Medication

ILS Specialist ██████████ allocated 6 minutes a day, 7 days a week, of HHS for assistance with taking medication. (Exhibit 1, page 11). As testified to and written in notes by ██████████, she ranked Appellant a "5" and allocated the time for Appellant because Appellant's conditions made her weak and unable to complete the task herself. (Exhibit 1, page 9; Testimony of ██████████). ██████████ further testified that, while 2 minutes a day is the time recommended by the RTS used by the Department, she increased the time to 6 minutes a day because of Appellant's need for insulin. (Testimony of ██████████). Appellant's provider/representative testified that Appellant has over 75 medications that Appellant takes over the course of the day. (Testimony of ██████████). Bryant also testified that it takes a few minutes to administer the medications each day and a few minutes more to check Appellant's blood sugar level and administer insulin. (Testimony of ██████████). ██████████ further testified that she has to give Appellant an injection once a week. (Testimony of ██████████).

With respect to the injections, ██████████ testified that she was never informed about any injection and ██████████ could only state that she thought the doctor would send in a form documenting Appellant's need for injections. (Testimony of ██████████; Testimony of ██████████). In any event, whether the injections are considered or not, the Department's allocation of 6 minutes per day for assistance with taking medication is affirmed. ██████████ accounted for both Appellant's medications and her insulin by increasing the HHS time from the recommended amount. To the extent Appellant disagrees with that determination, which is not clear given the times testified to by ██████████, Appellant cannot meet her burden of demonstrating by a preponderance of the evidence that the Department erred. Therefore, the Department's decision regarding assistance with

taking medication is affirmed.

Housework, Laundry, Shopping and Errands, Meal Preparation/Cleanup

Appellant and her representative also dispute the HHS time allocated for assistance with housework, laundry, shopping and errands, and meal preparation/cleanup. Those four tasks are all Instrumental Activities of Daily Living (IADLs) and ASM 363 addresses both the maximum hours allowed for assistance with IADLs and the proration of such services:

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 customer needs fewer hours, that is what must be authorized. Hours should continue to be prorated in shared living arrangements.

(ASM 363, pages 3-4 of 24 (underline added by ALJ))

Service Plan Development

Address the following factors in the development of the service plan:

- The extent to which others in the home are able and available to provide the needed services. Authorize HHS **only** for the benefit of the client and **not** for others in the home. If others are living in the home, prorate the IADL's by at least 1/2, more if appropriate.

(ASM 363, pages 4-5 of 24)

The undisputed evidence in this case establishes that the Appellant was living with her granddaughter/provider, who is able and available to provide the needed services, and her granddaughter's minor children in a shared living arrangement. (Exhibit 1, page 7; Testimony of ██████████). Given that others are living in the home, the Department was

bound to follow the mandated policy and prorate the HHS time and payment for all IADLs, except taking medication, by at least one-half. Likewise, the Department is bound to follow the mandated policy regarding the maximum times allowed for assistance for such services.

Here, the Department did follow the mandated policies. It prorated the maximum HHS times for housework, laundry, shopping, and meal preparation/cleanup by one-half and Appellant receives half of the monthly maximum hour limits for those IADLs. (Exhibit 1, page 11). That decision must be sustained as ASM 363 does not provide for any exceptions. Appellant can point to no error that harmed her and the Department's decision to with respect to housework, laundry, shopping and errands, and meal preparation/cleanup is sustained.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:

[Redacted]

Date Mailed: 9/8/11

***** 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 March 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.