

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

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IN THE MATTER OF:

██████████,

Appellant.

_____ /

Docket No. 2011-39038 HHS
Case No. 86606021

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to M.C.L. § 400.9 and 42 C.F.R. § 431.200 *et seq.*, upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. ██████████ appeared and testified on Appellant's behalf. Appellant also testified on his own behalf, with ██████████ sometimes translating for him. ██████████, Appeals Review Officer, represented the Department of Community Health. ██████████, Adult Services Supervisor, and ██████████, Adult Services Worker (ASW), from the ██████████ DHS-District ██████████ Office appeared as witnesses 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. (Exhibit 1, pages 27-29).
2. Appellant has been diagnosed by a physician with a herniated disc, tendinitis, hyperthyroidism, depression, and post traumatic stress syndrome (PTSD). Appellant has also diagnosed himself as having glaucoma and cataracts. (Exhibit 1, page 15).
3. Appellant applied for HHS and, as part of the application and assessment process, ASW Rouse conducted a home visit on ██████████. (Exhibit 1, page 11; Testimony of ASW Rouse).
4. Based on her assessment and information provided by Appellant during the home visit, ASW Rouse determined that Appellant qualified for HHS assistance with the tasks of grooming, housework, laundry, shopping, and

- meal preparation/cleanup. (Exhibit 1, pages 10, 14; Testimony of ASW Rouse).
5. ASW Rouse authorized a total of 15 hours and 12 minutes of HHS per month, with a monthly care cost of \$██████████. (Exhibit 1, pages 9-10).
 6. On the same day of the home visit, Appellant signed a HHS Statement of Employment form that provided he would initially receive 3.51 hours of HHS per week over 4 days a week, with his provider receiving a wage of \$██████████ per month. (Exhibit 1, page 26).
 7. On ██████████, the Department sent Appellant a Services and Payment Approval Notice notifying him that his application had been approved. The approval notice also stated that the start date of payments was ██████████. (Exhibit 1, pages 30-31).
 8. On ██████████, after speaking with Appellant, ASW ██████████ sent Appellant an Advance Negative Action Notice noting that Appellant was seeking a hearing due to the amount of payment. While that notice also stated that there had been a reduction in payments, there was no such reduction. (Exhibit 1, pages 6-8; Testimony of ASW Rouse; Testimony of Appellant).
 9. On ██████████, the Department received Appellant's Request for Hearing. In that request, Appellant states that the approved services will not meet his needs. (Exhibit 1, pages 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 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)

On ██████████, ASW Rouse completed a home visit and comprehensive assessment as part of the initial assessment of Appellant's case. Following that assessment, ASW Rouse authorized HHS for assistance with grooming, housework, laundry, shopping, and meal preparation/cleanup. Appellant subsequently requested a hearing regarding that decision.

As a preliminary matter, this Administrative Law Judge would note that it was initially unclear what Appellant is challenging. In the Request for Hearing, Appellant's representative asserted that Appellant wants assistance with the tasks of bathing, dressing, transferring, and mobility in addition to the services he was already approved for. However, at the hearing, Appellant stated that he is fine with the specific services he was approved for, but that he wants more time for assistance with those tasks.

Moreover, Appellant's claims are further complicated by his testimony that, after the home visit and the Department's approval, he fell and suffered injuries. According to Appellant, he now requires additional assistance because of those injuries. However, this Administrative Law Judge is limited to reviewing the decision the Department made based on the information available at the time of the decision.

During the hearing, Appellant testified that his need for assistance with bathing and

██████████ dressing only arose after his fall and that he is no longer seeking assistance with the tasks of mobility or transferring. Appellant also testified that he is not appealing what tasks he is receiving HHS for and, instead, is only appealing the times allocated for assistance with those tasks.

Given Appellant's testimony and the scope of this Administrative Law Judge's review, this decision will only address the amount of HHS authorized for assistance with the tasks of grooming, housework, laundry, shopping, and meal preparation/cleanup. Each of those disputed tasks will be addressed in turn and, for the reasons stated below, this Administrative Law Judge finds that the Department's decisions should be sustained.

Grooming

ASW ██████████ ranked Appellant a "3" in grooming and allocated 8 minutes of HHS assistance per day, 2 days a week. (Exhibit 1, pages 10, 14). According to Appellant, he requires 2 hours a week with grooming assistance. (Testimony of Appellant). In support of that assertion, Appellant testified that he has difficulty bending down and, therefore, cannot cut his toenails. (Testimony of Appellant). Appellant also testified that his provider shaves him and sometimes cuts his hair. (Testimony of Appellant).

While ASW ██████████ did grant some HHS for assistance with grooming, she also credibly testified and wrote in her notes that she observed Appellant kneel and get up without assistance. (Exhibit 1, page 10; Testimony of ASW ██████████). Moreover, at least some of Appellant's claims appear to be based on injuries from a fall and that fall occurred after the home visit. (Testimony of Appellant). This review is limited to the information and claims present at the time the Department made its decision. Given Appellant's subsequent injuries, as well as ASW ██████████ credible testimony and notes, Appellant's assertion that he cannot bend down is rejected. With respect to Appellant's remaining claims, ASW ██████████ has accounted for his needs in the time allotted and Appellant has failed to meet his burden of proving by a preponderance of the evidence that the Department erred. Therefore, the Department's decision with respect to grooming assistance is affirmed.

Housework

ASW ██████████ ranked Appellant a "3" in housework and allocated 12 minutes of HHS assistance per day, 1 day a week. (Exhibit 1, pages 10, 14). Appellant testified that he need 3 to 4 hours a month of assistance with housework because he has trouble moving. (Testimony of Appellant). Appellant also testified that, when he signed the form stating that he would receive assistance with housework once a week, he thought the form meant he would receive it 1 hour a week. (Testimony of Appellant).

With respect to Appellant's ability to move, ASW ██████████ found that Appellant's mobility is good and that he can use stairs without any assistance. (Exhibit 1, page 10; Testimony of ASW ██████████). She also observed Appellant kneel and get up without assistance. (Exhibit 1, page 10) Appellant confirmed in his testimony that he can go up and down stairs without assistance. (Testimony of Appellant). Appellant also testified that he is not seeking HHS for assistance with mobility. (Testimony of Appellant). Appellant did

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testify that his mobility has worsened since the home visit, due to a fall he suffered in late ██████████ (Testimony of Appellant), but this review only looks at the information available to the Department at the time it made its decision.

Given that Appellant is not seeking assistance for mobility, in addition to ASW ██████████ credible observations regarding Appellant's ability to move, Appellant's testimony regarding his difficulties with mobility are rejected. Accordingly, this Administrative Law Judge finds that Appellant has failed to meet his burden of proving by a preponderance of the evidence that the Department erred when allocating assistance with housework and the Department's decision is affirmed.

Laundry

ASW ██████████ ranked Appellant a "3" in laundry and allocated 14 minutes of HHS assistance per day, 1 day a week. (Exhibit 1, pages 10, 14). According to Appellant, however, he cannot do laundry by himself at all because he needs transportation to the laundromat, cannot carry a basket full of clothes, and has difficulty walking down stairs. (Testimony of Appellant).

Despite Appellant's request for such a service, transportation is not included in the services covered by HHS. ASM 363, pages 14-15 of 24. Additionally, Appellant's claims regarding a difficulty walking down stairs is rejected based on ASW ██████████ credible observations regarding Appellant's mobility (Testimony of ASW ██████████) and his own subsequent testimony that he can go down stairs without assistance (Testimony of Appellant). Lastly, Appellant's claims regarding his inability to carry a basket were accepted by ASW ██████████ and incorporated into his HHS assistance. (Exhibit 1, page 14; Testimony of ASW ██████████). The time allocated for assistance with housework is therefore affirmed as reflective of Appellant's need for physical assistance.

Shopping

ASW ██████████ ranked Appellant a "3" in shopping and allocated 10 minutes of HHS assistance per day, 1 day a week. (Exhibit 1, pages 10, 14). As with laundry, Appellant disputes that allotted time on the basis that he requires transportation and has difficulties with mobility and carrying things. (Testimony of Appellant). Similarly, as with laundry, Appellant's appeal must be rejected because transportation is not included in the services covered by HHS, Appellant's claims regarding his mobility lack merit, and Appellant's difficulties with carrying things are accounted for in the assistance given. Accordingly, the Department's decision with respect to shopping assistance is also affirmed.

Meal Preparation/Cleanup

ASW ██████████ ranked Appellant a "3" in meal preparation/cleanup and allocated 40 minutes of HHS assistance per day, 4 days a week. (Exhibit 1, pages 10, 14). According to Appellant, he requires at least 4 hours a week for assistance with that task. (Testimony of Appellant). Appellant also testified that his provider cooks for him 4 to 5 times a week and that meal preparation includes the provider wrapping food that

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Appellant can eat later on his own. (Testimony of Appellant).

Given Appellant's testimony, there is no dispute over the number of days of HHS Appellant requires, 4 days a week, and the only issue is how much time per day Appellant needs. ASW [REDACTED] testified that she allocated the 40 minutes a day by ranking Appellant a "3" and letting the computer implement the recommended amount of assistance for such a ranking. (Testimony of ASW [REDACTED]). As described above, in allocating time for assistance with a task, a worker will use the reasonable time schedule (RTS) as a guide. ASM 363, page 3 of 24. Here, based on her observations and assessment, ASW [REDACTED] found that there was no reason to change that recommended time. (Testimony of [REDACTED]). Nor did Appellant offer any reason during the hearing for diverging from the recommended time, especially where at least some of Appellant's claims are based on injuries incurred after the Department made its decision. Therefore, the Department's decision is sustained as reflective of Appellant's need for physical assistance.

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.

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

cc:

[REDACTED]

Date Mailed: 8/31/2011

***** 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.