

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

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IN THE MATTER OF:

Docket No. 2011-40510 HHS
Case No. 23085439

██████████,

Appellant.

_____ /

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 ██████████. Appellant appeared on her own behalf. ██████████, Appellant's grandson, also testified on Appellant's behalf. ██████████, Appeals Review Officer, represented the Department of Community Health. ██████████, Adult Services Supervisor, and ██████████, Adult Services (AS) Specialist, from the ██████████ County 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.
2. Appellant has been diagnosed by a physician with chronic obstructive pulmonary disease (COPD). Appellant has also diagnosed herself with arthritis, diabetes, and hypertension. (Exhibit 1, page 9).
3. In ██████████, Appellant applied for HHS. (Exhibit 1, page 9)
4. As part of the application and assessment process, AS Specialist Sharp conducted a home visit on ██████████. (Exhibit 1, page 12; Testimony of ██████████).
5. Based on her assessment and information provided by Appellant during the home visit, AS Specialist ██████████ determined that Appellant qualified for HHS assistance with the tasks of bathing, housework, laundry, shopping, and meal preparation/cleanup. (Exhibit 1, page 10; Testimony of ██████████).

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6. AS Specialist [REDACTED] authorized a total of 12 hours and 28 minutes of HHS per month for assistance with those tasks, with a total monthly care cost of \$ [REDACTED]. (Exhibit 1, page 13).
7. On [REDACTED], the Department sent Appellant a Services and Payment Approval Notice notifying her that her application had been approved and what her payments would be. (Exhibit 1, pages 5-8).
8. On [REDACTED], the Department received Appellant's Request for Hearing. In that request, Appellant states that the approved amount will not meet her service needs. (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)

On ██████████, AS Specialist ██████████ completed a home visit as part of the initial assessment of Appellant's case. Following that assessment, ██████████ authorized HHS for assistance with bathing, housework, laundry, shopping, and meal preparation/cleanup. Appellant challenges that approval on appeal and argues that the approved amounts will not meet her service needs. For the reasons discussed below, this Administrative Law Judge sustained the Department's decisions.

Bathing

With respect to the task of bathing, AS Specialist ██████████ ranked Appellant a "3" and allocated 16 minutes of HHS per day, 3 days a week. (Exhibit 1, pages 10, 13). Appellant disputes that time on the basis that she bathes 3 times a week and it takes 20-30 minutes each time. (Testimony of Appellant). Appellant also testified that her provider washes her, dries her, and helps her in-and-out of bathtub. (Testimony of Appellant). According to ██████████, however, Appellant told her during the home visit that Appellant washes herself and only needs assistance getting in-and-out of the bathtub. (Exhibit 1, page 12). AS Specialist ██████████ also noted that Appellant does not have any problems with her hands. (Exhibit 1, page 12).

Both Appellant and the Department agree that Appellant only requires assistance with bathing 3 days a week. Appellant does dispute the time per day for assistance and claims that she also requires assistance in washing and drying herself. However, while Appellant self-reported a diagnosis of arthritis, there is no evidence or medical documentation supporting Appellant's claim for additional services. Additionally, this Administrative Law Judge finds AS Specialist ██████████ to be credible with respect to what Appellant said she needed as bathing assistance, *i.e.* assistance getting in-and-out of the bathtub. Sixteen minutes per day is more than sufficient to help Appellant in-and-out of the bathtub and the Department's decision is affirmed as it is reflective of Appellant's need for physical assistance.

Housework

AS Specialist ██████████ ranked Appellant a "3" in housework and allocated 12 minutes of HHS per day, 1 day a week, for assistance with that task. (Exhibit 1, pages 10, 13). Appellant testified that she needs more assistance with housework because she gets

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too tired to do it herself. (Testimony of Appellant). She seeks 1 hour of assistance, 1 day a week. (Testimony of Appellant).

As stated in the Functional Assessment Definitions and Ranks of Instrumental Activities of Daily Living, a ranking of level 3 in housework means that a person “Requires physical assistance from another person for some tasks; e.g., *has limited endurance* or limitations in bending, stooping, reaching, etc.” ASM 365 (10-1-1999) (hereinafter “ASM 365”), page 2 of 2 (emphasis added by ALJ). Therefore, by ranking Appellant a 3 and allocating HHS, ██████████ clearly acknowledged Appellant’s limited endurance. (Testimony of ██████████). Appellant offers no basis for a higher rank or for departing from that allotted time. Accordingly, Appellant has failed to meet her burden of demonstrating by a preponderance of the evidence that the Department erred and the Department’s decision regarding assistance with housework is sustained.

Laundry

With respect to the task of laundry, AS Specialist ██████████ ranked Appellant a “3” and allocated 14 minutes of HHS per day, 1 day a week, for assistance with that task. (Exhibit 1, pages 10, 13). Appellant, however, testified that she cannot do laundry by herself because she gets too tired reaching for the laundry and going back and forth. (Testimony of Appellant). Appellant also testified that she needs 90 minutes of assistance every two weeks. (Testimony of Appellant).

As stated in the Functional Assessment Definitions and Ranks of Instrumental Activities of Daily Living, “Laundry” includes “Gaining Access to machines, sorting, manipulating soap containers, reaching into machines, handling wet laundry, operating machine controls, hanging laundry to dry, folding, and storing. ASM 365, page 2 of 2. Given that definition, HHS for assistance does not include the time while the machine is running and Appellant’s HHS is instead limited to actual physical assistance. Here, ██████████ acknowledged Appellant’s limited endurance when ranking Appellant and that is why she allocated time for assistance. (Testimony of ██████████). The Department’s decision regarding assistance with laundry is therefore affirmed as reflective of Appellant’s need for physical assistance.

Shopping

AS Specialist ██████████ ranked Appellant a “3” in shopping and allocated 10 minutes of HHS per day, 1 day a week, for assistance with that task. (Exhibit 1, pages 10, 13). Appellant testified that her doctor advised her not to do any shopping at all and that she gets too tired in her legs and arms to go shopping herself. (Testimony of Appellant).

While she claims her doctor advised her to totally avoid shopping, Appellant did not provide any documentation or medical evidence to that effect. Moreover, ██████████ clearly acknowledge Appellant’s limited endurance when ranking Appellant and allocating time for assistance with shopping. (Testimony of ██████████). Appellant offers no basis for a higher rank or for departing from that allotted time. Appellant has therefore failed to meet her burden of demonstrating by a preponderance of the evidence that the Department erred and the Department’s decision regarding assistance with shopping is

sustained.

Meal Preparation/Cleanup


AS Specialist ██████ ranked Appellant a “3” in meal preparation/cleanup and allocated 30 minutes of HHS per day, 3 days a week, for assistance with that task. (Exhibit 1, pages 10, 13). Appellant testified that, while she can warm up meals and do some meal preparation, she cannot do full meals. (Testimony of Appellant). According to Appellant, she requires 1 hour of assistance, 2 days a week.

Given Appellant’s testimony, the only dispute with respect to meal preparation/cleanup is whether Appellant should be granted 2 hours a week or 1 hour and 30 minutes of assistance per week. As with the other tasks described above, ██████ acknowledged Appellant’s limited endurance when ranking Appellant and allocating the time for assistance. (Testimony of ██████). Moreover, Appellant offers no evidence or support for the higher amount of time she is requesting. Accordingly, Appellant has failed to meet her burden of proof and the Department’s decision regarding assistance with meal preparation/cleanup is sustained.

Grooming

During the hearing, Appellant testified that she needs assistance with grooming because her left arm is “useless” and she cannot comb her hair, wash her hair, or trim her nails. (Testimony of Appellant). AS Specialist ██████ noted, however, that Appellant does not have any problems with her hands (Exhibit 1, page 12) and that, while she has arthritis in her left shoulder (Exhibit 1, page 10), Appellant reported that she can dress herself, wash herself, and sometimes cook dinner (Exhibit 1, page 12). Moreover, as testified to by ██████, the only diagnosis on Appellant’s medical needs form is COPD and Appellant presented no evidence of problems with her left shoulder other than Appellant’s self-reporting.

Appellant did not expressly state in her Request for Hearing that the Department denied her grooming assistance and she appeared to limit her appeal to the amount of HHS rather than the tasks HHS was authorized for. To the extent Appellant does request such assistance, the Department’s denial of that request is sustained. Appellant offers no evidence in support of her claim that her left arm is useless and no such diagnosis was present on her medical needs form. Moreover, Appellant’s testimony confirms that she can do a number of tasks that would seem to require the use of both arms.



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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:



Date Mailed: 9/1/11

***** 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 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.