

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

P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 334-9505

IN THE MATTER OF:

██████████,

Appellant.

_____ /

Docket No. 2011-43246 HHS
Case No. 26977618

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ), 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 and testified on her own behalf. ██████████, Appellant's chore provider and daughter, also appeared as a witness for Appellant. ██████████, Appeals Review Officer, represented the Department of Community Health. ██████████, Adult Services Supervisor, and ██████████, Adult Services Worker (ASW), from the ██████████ County DHS-██████████ Office appeared as witnesses for the Department.

ISSUE

Did the Department properly reduce Appellant's Home Help Services (HHS) payments?

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 multiple sclerosis-progressive, high blood pressure (HBP), osteoporosis, and osteoarthritis. (Exhibit 1, page 13).
3. Appellant had been receiving 80 hours and 50 minutes of HHS per month, with a care cost of \$ ██████ per month. (Exhibit 1, page 16).
4. On ██████████, ASW ██████████ conducted a home visit with Appellant and Appellant's chore provider. (Exhibit 1, page 14).
5. Based on her assessment and information provided by Appellant and Appellant's provider during that home visit, ASW ██████████ decided to reduce

the HHS hours authorized for assistance with dressing, eating, laundry, and shopping. The HHS time for taking medication was to be increased and assistance with transferring terminated. The times for other tasks would remain the same. (Exhibit 1, pages 16-17; Testimony of ASW ██████████).

6. On ██████████, the Department issued an Advance Negative Action Notice to Appellant indicating that her HHS payments would be reduced to \$██████████. The effective date of the reduction was identified as ██████████. (Exhibit 1, pages 6-9).
7. However, after speaking with the Appellant and Appellant's chore provider on the telephone, ASW ██████████ decided to reinstate the assistance with transferring at the prior amount. (Testimony of ASW Burns).
8. After the changes, Appellant would receive a total of 54 hours and 7 minutes of HHS per month, with a total monthly care cost of \$██████████. (Exhibit 1, page 17).
9. On ██████████, the Department issued another Advance Negative Action Notice to Appellant. That second notice also provided that her HHS payments would be reduced, but the amount was changed to \$██████████ a month. The effective date of the reduction remained the same, ██████████. (Exhibit 1, pages 10-13).¹
10. On ██████████, the Department received Appellant's Request for Hearing. In that request, Appellant disputes the changes made to HHS for taking medication, laundry, shopping, and transferring. (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.

¹ The Advance Negative Action Notice issued by the Department in this case failed to provide Appellant with the notice required by 42 C.F.R. § 431.211, *i.e.* 10 days. (Exhibit 1, pages 10-13). However, the actual reduction in this case was not implemented until after the required notice period had expired. (Exhibit 1, page 20; Testimony of ASW ██████████).

Adult Services Manual 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)

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)

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;

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- 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 ██████████ completed a home visit and an HHS comprehensive assessment in accordance with Department policy. Following that assessment, the ASW reduced the HHS times authorized for assistance with laundry and shopping, while also increasing the HHS time for assistance with taking medication.² The ASW also authorized the same amount of HHS time for assistance with transferring as before. In her Request for Hearing, Appellant disputes the reductions in time for laundry and shopping, as well as the times allocated for assistance with taking medication and transferring. The specific disputed activities will be addressed in turn and, for the reasons discussed below, this Administrative Law Judge finds that the Department's decisions must be affirmed.

Laundry

ASW ██████████ reduced HHS for assistance with laundry from 14 minutes per day, 7 days a week (7:01 hours a month) to 1 hour a day, 1 day a week (4:18 hours a month). (Exhibit 1, pages 16-17). According to ASW ██████████, she made that change because Appellant informed her that laundry was only done once a week. (Testimony of ASW ██████████). Appellant's testimony confirmed that laundry is only done once a week, but she also asserts that it takes 3 and a half-hours to do the laundry. (Testimony of Appellant).

However, in her testimony and argument for more assistance, Appellant included the time when the washer or dryer were running without supervision. Those times, during which the machines can be left unattended and the provider can do other things, comprise the bulk of the time identified by Appellant and are not covered by HHS. 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. Adult Services Manual 365 (10-1-

² ASW ██████████ also reduced the HHS time authorized for assistance with dressing and eating, but Appellant did not challenge those reductions in her Request for Hearing or during the hearing itself.

1999) (hereinafter “ASM 365”), page 2 of 2. Given that definition, HHS for assistance with laundry does not include the times when the machines are running unattended and Appellant’s HHS should instead be limited to actual physical assistance. The Department’s reduction of HHS for assistance with laundry is therefore affirmed as reflective of Appellant’s need for physical assistance.

Shopping

With respect to shopping, ASW ██████████ reduced HHS assistance from 10 minutes a day, 7 days a week (5:01 hours a month), to 30 minutes a day, 1 day a week (2:09 hours a month). (Exhibit 1, pages 16-17). She also testified that she made that change because Appellant told her that the provider only goes shopping every other week. (Testimony of ASW ██████████). On the other hand, Appellant testified that shopping, including the travel time necessary to make multiple trips to the store or the pharmacy, takes 5 hours a month. (Testimony of Appellant).

As defined in the Functional Assessment Definitions and Ranks of Instrumental Activities of Daily Living, “Shopping and Errands” is “Limited to brief, occasional trips in the local area to shop for food, medical necessities and household items required specifically for health and maintenance of the client.” ASM 365, page 2 of 2. Moreover, Appellant was ranked a “4” with respect to shopping (Exhibit 1, page 19) and that ranking provides that Appellant “Requires the assistance with another person for most tasks, e.g. help with major shopping and errands needed, but client can accompany and assist in selection of items. ASW 365, page 2 of 2.

In this case, however, Appellant appears to seek payments for the entire shopping process despite the fact that she is not totally dependent on assistance for that task. Additionally, Appellant also appears to seek payment for matters not covered by HHS. For example, transportation or the time needed to travel to the store are not covered by HHS. ASM 363, pages 14-15 of 24; ASM 356, page 2 of 2. Appellant has failed to meet her burden of demonstrating by a preponderance of evidence that the Department erred by reducing the time for assistance with shopping and, consequently, that decision is sustained.

Taking Medication

ASW ██████████ increased HHS for assistance with taking medication from 2 minutes a day, 4 days a week, to 2 minutes a day, 7 days a week. (Exhibit 1, pages 16-17). According to ASW ██████████, she made that increase after learning that the provider sets up the medications once a week and checks them daily. (Testimony of ASW ██████████). Appellant testified that the increase was not enough as it takes the provider 7 minutes to set up the medications and 6 minutes each day to ensure that Appellant takes her medication. (Testimony of Appellant). However, Appellant also testified that she can physically take her own medication. (Testimony of Appellant).

Given that Appellant can undisputedly take her own medications, HHS are only required to assist in the preparation for taking those medications. With respect to the types of

preparation described by Appellant, only the 7 minute, once-a-week setting up of medications is covered by HHS. The daily supervision of Appellant taking her medications is not covered because services such as supervising, monitoring, reminding, guiding or encouraging are not included in HHS. ASM 363, pages 14-15 of 24. Therefore, based on the information available at the time of the decision, the Department's increase/allocation of time for taking medication is sustained as it is reflective of Appellant's need for assistance.

Transferring

With respect to the task of transferring, ASW ██████ ultimately kept the HHS at 6 minutes per day, 7 days a week. (Exhibit 1, pages 16-17). Appellant disputes that allocation of time and argues that she requires more assistance with transferring.

ASW ██████ testified and wrote in her notes that, at first, she was going to terminate assistance with transferring altogether after watching Appellant independently transfer from her wheelchair to the couch. (Testimony of ASW ██████; Exhibit 1, pages 14, 19). ASW ██████ also testified that she verbally confirmed with Appellant that Appellant no longer required assistance with transferring. (Testimony of ASW ██████). However, ASW ██████ further testified that, after speaking with Appellant, she reinstated the assistance for transferring because Appellant told her that Appellant still required assistance with transferring. (Testimony of ASW ██████). ASW ██████ could not recall exactly what Appellant told her, only that it was sufficient. (Testimony of ASW ██████).

Appellant in turn testified that she needs assistance getting in-and-out of the bed each day, which takes 10 minutes a day, and help in transferring from her wheelchair to the car and from the car to her wheelchair. (Testimony of Appellant). The only car rides Appellant described were trips to her doctor, which occur 4 times a month and require 40 minutes of transferring each time. (Testimony of Appellant).

Therefore, both Appellant and ASW ██████ now agree that Appellant requires some assistance with transferring and the question is just how much assistance should have been allocated. With respect to that assistance, ASW ██████ testified that, after speaking with Appellant, she decided to maintain the amount of transferring assistance previously authorized. (Testimony of ASW ██████). Appellant had been at the level of assistance for over a year and, while she now testifies that she requires additional transferring assistance, there is no simply no evidence suggesting that she discussed specific times with ASW ██████ or that she requested anything other than a restoration of what she was previously receiving. Accordingly, given the information available to the Department at the time of its decision, its decision to maintain HHS for transferring at the same amount must be affirmed.

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

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: 9/15/2011

***** 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.