

**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. 2011-23895 HHS

Case No. ██████████

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 appeared on her own behalf. ██████████, represented the Department of Community Health. ██████████, Appellant's Adult Services Worker (ASW) at the ██████████ DHS Office, appeared as a witness for the Department.

ISSUE

Did the Department properly calculate the 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. (Exhibit 1, page 11).
2. Appellant has been diagnosed by a physician with diabetes, obesity, congestive heart failure (CHF), and depression. Appellant has also diagnosed herself as having "brain lesions" while other sources have diagnosed her as having fibromyalgia syndrome, osteoarthritis, liver function impairment, and a herniated disc. (Exhibit 1, page 12).
3. Appellant had been receiving 76 hours and 14 minutes of Home Help Services with a care cost of ██████████ per month. (Exhibit 1, page 9).
4. On ██████████, ASW ██████████ conducted a home visit with Appellant as part of a six-month review. (Exhibit 1, pages 5-7).
5. Based on her assessment and information provided by Appellant, ASW ██████████ reduced the HHS hours authorized for bathing, dressing, taking medication, and meal preparation/cleanup. The reduction resulted in a

total of 45 hours and 59 minutes of Home Help Services per month, with a monthly care cost of ██████████. (Exhibit 1, page 8).

6. On ██████████, ASW ██████████ issued an Advance Negative Action Notice to Appellant indicating that her Home Help Services payments would be reduced effective ██████████. (Exhibit 1, pages 5-7).
7. On ██████████, the Department received Appellant's Request for Hearing. (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 ██████████, ASW ██████████ completed a home visit as part of a six month review of Appellant's case and an HHS comprehensive assessment in accordance with Department policy. Following that assessment, the ASW made reductions to the HHS hours authorized for bathing, dressing, taking medication, and meal preparation/cleanup. Appellant disagrees with those reductions and also disputes the lack of additional time for laundry and shopping. Each of the specific disputed activities will be addressed in turn and, for the reasons discussed below, this Administrative Law Judge finds that the Department properly calculated the Appellant's HHS payments based on the available information.

As a preliminary matter, Appellant argues that her doctor recommended 20 hours per week of care and that her doctor's opinion supersedes the Department's determinations. However, as stated above, ASM 363 expressly provides that "*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, p. 3 of 24 (emphasis added), and that "*The adult services worker is responsible for determining the necessity and level of need for HHS*", ASM 363, p. 9 of 24 (emphasis added).

Bathing

The HHS hours for bathing assistance were reduced from 30 minutes per day, 7 days per week to 10 minutes per day, 7 days a week. (Exhibit 1, pages 8-9). Appellant disputes the reduction of time on the basis that her bathing takes at least 40 minutes, including the time she soaks in the bathtub, the time she takes to wash herself, the time the chore provider takes to wash Appellant's hair, the time the chore provider takes to shave Appellant's legs if necessary, and the time the chore provider takes to wash the parts of Appellant's body that Appellant cannot reach. However, the bulk of the time identified by Appellant is not covered by HHS as HHS only includes hands-on assistance and does not include time spent monitoring or supervising Appellant. ASM 363, pages 2-3, 14 of 24. Therefore, the time Appellant spends soaking in the tub or washing herself must be excluded.

Additionally, other tasks identified by Appellant as part of her bathing process are better allocated to another Activity of Daily Living and should not be considered in calculating her bathing services. As stated in the Functional Assessment Definitions and Ranks of Activities of Daily Living, "Bathing" is "Cleaning the body or parts of the body and shampooing hair, using a tub, shower, or sponge bath, including getting a basin of water, managing faucets, soaping, rinsing, and drying" while "Grooming" is "Maintaining personal hygiene and neat appearance, including hair combing and brushing, oral

Docket No. 2011-23895 HHS
Decision and Order

hygiene, shaving, fingernail and toenail care (unless toenail care is medically contraindicated).” Adult Services Manual 365 (10-1-99), page 1 of 2. Given those definitions, tasks such as the chore provider shaving Appellant’s legs are not part of bathing and cannot be used to dispute the reduction of in bathing time.¹

Appellant testified that she generally bathes herself, but that she needs assistance in getting in-and-out of the tub and washing parts of her body. Despite Appellant’s testimony to the contrary, that assistance was precisely the type of assistance allocated for by the Department and, after excluding the time requested for hands-off assistance or tasks covered by grooming, the reduction of HHS time allocated for bathing is reflective of Appellant’s need for assistance with that activity. Accordingly, the Department’s decision must be sustained.

Laundry

With respect to the IADL of laundry, while the time allocated for the task was not reduced during the most recent assessment (Exhibit 1, pages 8-9), Appellant still disagrees with the determination in that she seeks additional time. Appellant’s request for additional HHS time for laundry is based on her continence issues. However, Appellant is already receiving the maximum amount of time for laundry assistance under the relevant policy. As discussed above, ASM 363 expressly provides that the monthly maximum hour limit for laundry is 7 hours per month. ASM 363, page 4 of 24. Appellant is receiving that maximum. (Exhibit 1, page 8). Accordingly, the Department’s decision to deny additional HHS time for laundry must be affirmed.

Shopping and Errands

Similarly, the decision to deny Appellant’s request for additional time with respect to shopping must also be affirmed. The HHS time for shopping was not reduced during the most recent assessment (Exhibit 1, pages 8-9), but Appellant requests more as her provider cannot complete all the numerous errands the provider runs for Appellant in the given time. However, not all of the errands identified by Appellant are covered by HHS as “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. In any event, even if all of the shopping was included, Appellant’s request for additional time would still have to be denied as she is already receiving the maximum amount of time that can be allocated for shopping and errands. As provided above, ASM 363 sets the monthly maximum hour limit on shopping at 5 hours per month. ASM 363, page 3 of 24. Appellant is receiving that maximum amount. (Exhibit 1, page 8).

¹ With respect to grooming, Appellant receives HHS for 12 minutes per day, 7 days per week. (Exhibit 1, page 8). That time was not reduced during the most recent assessment (Exhibit 1, pages 8-9) and Appellant does not argue that the time allocated for grooming is insufficient, even when including tasks she mistakenly believed were covered by bathing.

Dressing

With respect to dressing, Appellant disputes the reduction from 14 minutes per day, 7 days per week to 10 minutes per day, 4 days a week. (Exhibit 1, pages 8-9). In support of her argument, Appellant testified that the ASW failed to assess her and that, while she primarily dresses herself, she occasionally needs help. However, despite Appellant's claim that the ASW failed to assess her, the ASW reported Appellant as making the same statements regarding her need for assistance with dressing and the reduction was in fact based on those statements. (Exhibit 1, page 13; ASW ██████████ testimony). Based on that information, that Appellant primarily dresses herself and only occasionally requires some help, the reduction of HHS time allocated for dressing is sustained as it is reflective of Appellant's need for assistance with that activity.

Taking Medication

Appellant also disputes the reduction of HHS time allocated for assistance with medication from 10 minutes per day, 7 days per week to 2 minutes per day, 7 days a week. (Exhibit 1, pages 8-9). The ASW's notes, the ASW's testimony, and Appellant's testimony reflect that the provider sets out medications on a tray for Appellant once a day. However, Appellant also seeks HHS for the time the provider spends making sure Appellant takes the medication and, as described above, such hands-off verbal reminders or supervision are not covered by HHS. Appellant further asserts that provider applies one medication on Appellant's body and in an area Appellant cannot reach, but there is no suggestion that she informed the ASW of that at the time of the assessment. Based on the information available at the time of the decision, the Department's reduction of time for medication is sustained as it is reflective of Appellant's need for assistance.

Meal Preparation and Cleanup

With respect to meal preparation and cleanup, Appellant's HHS were reduced from 50 minutes per day, 7 days a week, which was the maximum amount allowed under policy, to 20 minutes per day, 7 days a week. (Exhibit 1, pages 8-9). ASW ██████████ notes and testimony provide that Appellant told her that Appellant mostly eats small meals, which Appellant herself prepares, throughout the day and that the provider only prepares dinner. According to ASW ██████████, 20 minutes per day is the time the State recommends for preparation of dinner.

Appellant does not dispute that she prepares and eats small meals or snacks throughout the day, but she also testified that her provider prepares both lunch and dinner. ASW ██████████, on the other hand, testified that Appellant never said that the provider prepared lunch. Given all of the testimony in this case, ASW ██████████ is the more credible witness and her testimony that Appellant never claimed during the assessment that the provider prepared lunch should be accepted. As discussed above, while Appellant broadly testified that the ASW completely failed to assess her and, instead, simply assigned times as the ASW intended to prior to meeting with Appellant, the vast majority of Appellant's testimony during the hearing was consistent with the

Docket No. 2011-23895 HHS
Decision and Order

ASW's earlier notes. That consistency indicates that the ASW did in fact interview and assess Appellant, and that Appellant's testimony was mistaken at the very least. That consistency also weakens Appellant's credibility and suggests that ASW [REDACTED] notes and testimony accurately reflect what Appellant told her during the assessment. Accordingly, based on the information available at the time of the decision, the Department's decision to reduce the time for HHS for meal preparation and cleanup is sustained.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

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

cc:

[REDACTED]

Date Mailed: 6/24/2011

***** 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.