

**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. 2011-32579 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. ██████████, Appeals Review Officer, represented the Department of Community Health. ██████████, Appellant's Adult Services Worker (ASW), ██████████ Eligibility Specialist, and ██████████, Adult Services Supervisor, from the ██████████ DHS Office appeared as witnesses for the Department.

ISSUE

Did the Department properly reduce 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.
2. Appellant has been diagnosed by a physician with diabetic neuropathy and osteoarthritis. (Exhibit 1, page 10).
3. Appellant had been receiving 30 hours and 37 minutes of HHS per month, with a care cost of ██████████ per month. (Exhibit 1, page 9).
4. On ██████████, ASW ██████████ conducted a home visit with Appellant. (Exhibit 1, pages 13).
5. Based on her observations, ASW ██████████ decided to terminate HHS for dressing, bathing, and grooming. (Exhibit 1, page 11-13; Testimony of ASW ██████████).
6. Following the home visit, ASW ██████████ spoke with Eligibility Specialist

██████████ and learned that the Bridges System lists other adults as living in the same home as Appellant. (Exhibit 1, page 9; Testimony of ASW ██████████; Testimony of ██████████).

7. Based on that information, ASW ██████████ prorated and reduced the HHS time authorized for laundry and shopping. (Testimony of ASW ██████████).
8. After the terminations and reductions, Appellant would receive a total of 9 hours and 2 minutes of HHS per month, with a monthly care cost of ██████████. (Exhibit 1, page 14).
9. On ██████████ ASW ██████████ issued an Advance Negative Action Notice to Appellant indicating that her HHS payments would be reduced effective ██████████. (Exhibit 1, pages 5-8).
10. 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.

On ██████████, ASW ██████████ completed a home visit and assessment of Appellant. The next day, she spoke with Eligibility Specialist Arnston and learned that the Bridges System lists other adults as living in the same home, despite Appellant's statement that Appellant lived alone. Based on that assessment and conversation, the ASW terminated HHS for dressing, bathing, and laundry while also reducing the HHS times authorized for laundry and shopping. Appellant disagrees with those terminations and reductions.

Both the elimination of HHS for certain tasks and the reduction of HHS for other tasks will be addressed in turn. For the reasons discussed below, this Administrative Law Judge finds that, while the ASW properly prorated and reduced the HHS hours for laundry and shopping, the termination of HHS assistance for dressing, bathing, and grooming was in error.

Proration

Adult Services Manual 363 (9-1-08) (hereinafter "ASM 363") addresses the issue of proration of IADL 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)

Here, the Department prorated and reduced by one-half the HHS time allocated for assistance with the IADLs of laundry and shopping. According to ASW ██████████, she made that reduction after speaking with Eligibility Specialist ██████████ and learning that others were living in the home with Appellant. (Testimony of ASW ██████████). ██████████ testified in turn that she told ██████████ about others living in the home with Appellant after checking the Bridges System and discovering that two other adults receiving aid had listed the same address as Appellant. (Testimony of ██████████). Appellant testified that, while other adults were living with her for a short period, they were gone by the time of ASW ██████████ assessment and Appellant is currently living alone. (Testimony of

Appellant). Appellant also testified that she never informed the Department that others had been living with her and that she does not know if her former roommates change their addresses in the Bridges System. (Testimony of Appellant).

Given the information available to the Department at the time of the reduction, its decision must be affirmed. The undisputed evidence in this case demonstrates that the Appellant was living in a shared living arrangement at one point. Appellant asserts that no one was living with her at the time of the assessment, but Appellant is less than credible given her previous failure to report her shared living arrangement. Moreover, even if no one was living with Appellant at the time of the assessment, the Department had no way of knowing that in light of Appellant's roommates' failure to change their addresses in the Bridges System. Therefore, the Department was bound to follow the mandated policy and prorate the HHS time and payment for any IADLs by at least one-half and its decision to do so with respect to laundry and shopping is sustained.¹

Terminations

Adult Services Manuals 361 (6-1-07) (hereinafter "ASM 361") and 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.

¹ ASW ██████████ testified that, while she did not prorate the HHS time for assistance with housework, it had already been prorated prior to the ██████████ assessment. (Testimony of ASW ██████████). However, there is no other evidence suggesting any previous prorating and it appears ASW ██████████ simply neglected to prorate HHS for that task. There was no change with respect to housework during the most recent assessment and the ASW's notes simply say that Appellant is unable to bend or stand any length of time due to her size. (Exhibit 1, pages 11, 14-15). To the extent the Department failed to follow the proration policy with respect to housework, it was generous in favor of the Appellant. Appellant can point to no error that harmed him and the Department's decision to prorate is sustained.

- 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.

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- Money management, e.g., power of attorney, representative payee;
- Medical services;
- Home delivered meals;
- Adult day care.

(ASM 363, pages 14-15 of 24)

With respect to dressing, bathing and grooming, ASW ██████████ testified that she eliminated HHS assistance because Appellant was physically capable of doing the tasks on her own. According to ASW ██████████ she determined that Appellant was capable of doing the tasks on her own because Appellant could walk without assistance and could cook her own meals. (Testimony of ASW ██████████; Exhibit 1, pages 11-12). However, ASW ██████████ also acknowledges that she did not specifically discuss dressing or bathing with Appellant while completing the assessment. (Testimony of ASW ██████████). With respect to grooming, ASW ██████████ only noted that Appellant can brush her teeth and has barely any hair. (Exhibit 1, page 11).

Appellant disputes the elimination of HHS assistance and testified that she is unable to bathe, groom or dress herself because she cannot lift her arms or bend over very well. (Testimony of Appellant). Appellant also testified that she does not lift her arms while cooking. (Testimony of Appellant).

Given the above evidence, the Department's decision to eliminate HHS assistance for bathing, grooming and dressing must be reversed. ASW ██████████ concedes that she did not specifically address those then and, instead, based her determination solely on Appellant's abilities with respect to other tasks, such as mobility and meal preparation/cleanup. However, the ASW should rank and perform a functional assessment for each specific task as the tasks do not necessarily involve the same requirements. For example, "Mobility" is "Walking or moving around inside the living area, changing locations in a room, moving from room to room, does respond adequately if he/she stumbles or trips. Does step over or maneuver around pets or obstacles, including uneven floor surfaces. Does climb or descend stairs. Does **not** refer to transfers, or to abilities or needs once destination is reached" while "Meal Preparation and Cleanup" is "Planning Menus. Washing, peeling, slicing, opening packages, cans and bags, mixing ingredients, lifting pots and pans, reheating food, cooking, safely operating stove, setting the table, serving the meal. Washing and drying dishes and putting them away." Adult Services Manual 365 (10-1-99) (hereinafter "ASM 365"), pages 1-2 of 2. On the other hand, "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 hygiene, shaving, fingernail and toenail care (unless toenail care is medically contraindicated)." ASM 365, page 1 of 2. Finally, "Dressing" is defined as

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“Putting on and taking off, fastening and unfastening garments and undergarments, special devices such as back or leg braces, corsets, elastic stockings/garments and artificial limbs or splints.” ASM 365, page 1 of 2. In this case, contrary to policy, ASW ██████████ did not utilize those specific definitions or assess Appellant for the specific activities of bathing, grooming or dressing. Instead, ASW ██████████ relied solely on her determination that Appellant was mobile and could cook for herself. In doing so, the ASW erred.

Moreover, solely using Appellant’s ability to perform other tasks to determine her ability to bathe, groom or dress herself is even more problematic in this case as the ASW’s assessment of those other tasks contradict each other. For example, while ASW ██████████ found that Appellant was mobile enough to walk up stairs while assessing grooming, she also found that Appellant could not walk down stairs while assessing laundry. (Exhibit 1, page 11).

The dispute regarding Appellant’s abilities with respect to bathing, grooming and dressing arise out Appellant’s claims that she cannot lift her arms or bend herself to wash her back. ASW ██████████ did not address Appellant’s ability to lift or bend when discussing the three disputed tasks. To the extent ASW ██████████ does address lifting or bending when discussing Appellant’s abilities, it was during the assessment for housework when ASW ██████████ found that Appellant is unable to bend or stand for any length of time. (Exhibit 1, page 11). Such an assessment only weakens ASW ██████████ conclusions regarding bathing, grooming and dressing.

Instead of making a similar determination with respect to bathing, grooming and dressing, ASW ██████████ solely relied on Appellant’s perceived mobility and Appellant’s statement that Appellant can cook for herself in finding that Appellant can also bathe, dress and groom. However, Appellant testified that she does not lift or bend when cooking. That testimony is uncontradicted as ASW ██████████ never addressed it and this Administrative Law Judge finds Appellant to be credible.

Accordingly, this Administrative Law Judge finds that the termination of HHS assistance for dressing, bathing, and grooming was improper and the Department’s decision must be reversed. ASW ██████████ never fully assessed Appellant for those tasks and her other findings contradict themselves. Additionally, Appellant’s testimony that she cannot perform the tasks without assistance is both credible and actually supported by ASW ██████████ assessment with respect to housework.


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DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly prorated and reduced the HHS hours for laundry and shopping, but erred in terminating HHS assistance for dressing, bathing, and grooming.

IT IS THEREFORE ORDERED THAT:

The Department's decision is **AFFIRMED IN PART** and **REVERSED IN PART**.

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

cc: 

Date Mailed: 8/9/2011

***** 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.