

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

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IN THE MATTER OF:

██████████,

Appellant.

Docket No. 2011-33840 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's daughter and chore provider, appeared and testified on Appellant's behalf. ██████████ also testified on Appellant's behalf. ██████████, Appeals Review Officer, represented the Department of Community Health. ██████████, Adult Services Supervisor, and ██████████, Adult Services Worker (ASW), from the ██████████ HHS Office appeared as witnesses for the Department.

ISSUE

Did the Department properly calculate the amount and start date for Appellant's 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 an ██████ year-old male Medicaid beneficiary. (Exhibit 1, page 14).
2. Appellant has been diagnosed with hypertension and diabetes. (Exhibit 1, page 7).
3. According to Appellant's witnesses, they applied for HHS on behalf of Appellant in late ██████████. They also testified that they attempted to follow-up on that application daily without being able to speak with anyone at the Department of Human Services (DHS) or having their phone calls returned. (Testimony of ██████████ Testimony of ██████████). However, they further testified that they were in contact with an ASW and that the ASW, who has since retired, kept giving them conflicting reasons

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- for the delay in processing the application. (Testimony of [REDACTED]; Testimony of [REDACTED]).
4. According to Supervisor [REDACTED], she processed Appellant's application for HHS on [REDACTED] and that the day she processed the application was the first day she heard about Appellant's case. (Testimony of [REDACTED]). [REDACTED] also testified that Appellant's case would not have been assigned a worker prior to [REDACTED] processing the application. (Testimony of [REDACTED]).
 5. The Department's Adult Services Comprehensive Assessment Program (ASCAP) System records the referral date for Appellant's case as [REDACTED] [REDACTED] (Exhibit 1, page 13).
 6. ASW [REDACTED] was subsequently assigned to Appellant's case. (Testimony of ASW [REDACTED] Testimony of [REDACTED]).
 7. Between [REDACTED] and [REDACTED], there was very little contact between Appellant's representative and ASW [REDACTED]. (Testimony of [REDACTED]; Testimony of ASW [REDACTED]). However, according to [REDACTED], she tried to speak with ASW [REDACTED] or anyone else in DHS on numerous occasions without success. (Testimony of [REDACTED]).
 8. On [REDACTED], ASW [REDACTED] conducted a home visit and comprehensive assessment with Appellant and Appellant's provider. (Exhibit 1, pages 16-18; Testimony of ASW [REDACTED]).
 9. Following that home visit and assessment, ASW [REDACTED] authorized HHS for the tasks of bathing, dressing, transferring, medication, housework, laundry, shopping, and meal preparation. (Exhibit 1, pages 8-11).
 10. On [REDACTED], ASW [REDACTED] sent Appellant a Services and Payment Approval Notice indicating that HHS payments had been approved in the amount of [REDACTED] per month and that the effective date of the approval was [REDACTED]. (Exhibit 1, pages 5-6).
 11. On [REDACTED], the Department received Appellant's Request for Hearing. In that request, Appellant states that the approved amount of HHS is insufficient and that the payments should have covered all of the months he applied for. (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

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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 agencies.

In this case, Appellant disputes both the amount of HHS authorized and the date those benefits were made effective. For the reasons discussed below, this Administrative Law Judge finds that the Department erred in determining the amount of HHS for assistance with taking medication, but that its decisions with respect to all other tasks must be affirmed. This Administrative Law Judge also finds that the Department's decision regarding the start date for Appellant's HHS must be affirmed as well.

TIME/TASK HOURS

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.

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- 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;

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- Home delivered meals;
- Adult day care.

(ASM 363, pages 14-15 of 24)

Mobility

Appellant first disputes the decision not to authorize any HHS for assistance with mobility. In policy, "Mobility" is defined as "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." Adult Services Manual 365 (10-1-99) (hereinafter "ASM 365"), page 1 of 2.

Here, ASW ██████████ ranked Appellant a "1" with respect to mobility and, accordingly, did not authorize and HHS with respect to that task. (Exhibit 1, pages 8, 11). Appellant's representative testified that Appellant suffers from vertigo and needs assistance with mobility because of that condition and his problems with balance. (Testimony of ██████████). ██████████ also testified that she has observed Appellant's difficulties with mobility and balance. (Testimony of ██████████).

Appellant's file with the Department does not contain a diagnosis of vertigo. (Exhibit 1, page 7). Appellant's representative testified that it is a new condition that only started a month before the home visit and that they are in the process of acquiring a cane and walker for Appellant. (Testimony of ██████████). ██████████ also testified that she informed ASW ██████████ about Appellant's vertigo during the home visit. (Testimony of ██████████). Similarly, the referral details state that Appellant is applying for HHS in part because of a difficulty walking. (Exhibit 1, page 13). ASW ██████████, however, observed Appellant moving around and coming down stairs without difficulty. (Testimony of ASW ██████████; Exhibit 1, pages 16-18). Given those credible observations by the ASW, as well as the lack of medical documentation regarding any difficulties with mobility, the denial of HHS with respect to mobility is sustained.

Transferring

With respect to transferring, ASW ██████████ ranked Appellant a "3" and allocated 6 minutes per day, 7 days a week, of HHS. (Exhibit 1, pages 8, 11). According to ASW ██████████ notes and testimony, she allocated that amount of time because, as she observed, Appellant requires assistance to get out a bed or chair every time he is getting up. (Testimony of ASW ██████████; Exhibit 1, pages 8, 17). Appellant does not dispute the ranking or ASW ██████████ specific findings, but Appellant's representative does assert that he requires more than 6 minutes of transferring assistance per day due to his unbalance gait and need for assistance in getting around. (Testimony of ██████████ Exhibit 1, page 4).

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However, in making that argument, Appellant's representative appears to confuse transferring with mobility. As stated in the Functional Assessment Definitions and Ranks of Activities of Daily Living, "Transferring" is "Moving from one sitting position or lying position to another sitting or lying position; e.g. from bed to or from a wheelchair or sofa, coming to a standing position and/or repositioning to prevent skin breakdown" while "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." ASW 365, page 1 of 2.

Given those definitions, Appellant's representative's focus on Appellant's ability to walk while discussing transferring is misplaced. There is simply no evidence or testimony that Appellant needs additional help in transferring and the Department's decision must therefore be affirmed.

Bathing

Appellant also disputes the amount of HHS time allocated for assistance with bathing. Here, ASW ██████████ ranked Appellant a "5" and allocated 10 minutes per day, 7 days a week, of HHS for assistance with bathing. (Exhibit 1, pages 8, 11). According to ASW ██████████ notes and testimony, Appellant is weak and needs to be monitored while in the tub. (Testimony of ASW ██████████; Exhibit 1, pages 8, 17). The ASW also noted that Appellant needs assistance getting in-and-out of the tub and in washing. (Testimony of ASW ██████████; Exhibit 1, pages 8, 17). Appellant's representative argues that the time allocated for bathing is insufficient because it takes longer than 10 minutes a day to bathe Appellant and help him get in-and-out of the bathtub. (Testimony of ██████████)

While it is undisputed that Appellant needs to be monitored or supervised while he is bathing, HHS cannot be authorized for that assistance. Services such as supervising, monitoring, reminding, guiding and encouraging are expressly excluded from HHS. ASM 363, pages 14-15 of 24. With respect to the remaining dispute over the actual minutes of assistance, Appellant has failed to meet his burden of showing that the Department erred. Appellant's representative testified that it takes longer than 10 minutes a day to bathe Appellant, but she did not explain or justify why it takes longer. Accordingly, the Department's decision must be affirmed.

Dressing

With respect to the task of dressing, ASW ██████████ ranked Appellant a "3" and allocated 7 minutes per day, 7 days a week, of HHS. (Exhibit 1, pages 8, 11). As testified to and written in her notes by ASW ██████████, Appellant can barely bend down and he requires help with his pants, shoes and buttons. (Testimony of ASW ██████████; Exhibit 1, pages 8, 17). Appellant's representative testified that she needs more than 7 minutes to dress Appellant, but, again, she does not describe any additional help he needs or explain when she needs more time to assist him. (Testimony of ██████████). Appellant has failed to meet his burden of proof with respect to this task and the Department's

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decision regarding assistance with dressing is therefore sustained as reflective of Appellant's need for physical assistance.

Taking Medication

ASW [REDACTED] allocated 2 minutes per day, 7 days a week, of assistance with taking medication. (Exhibit 1, page 11). According to ASW [REDACTED] notes, those times were based on the fact that Appellant had multiple medications that have to be taken at different times and that some of those medications have to be injected. (Testimony of ASW [REDACTED]; Exhibit 1, pages 8-9, 17) She also noted that Appellant is forgetful. (Testimony of ASW [REDACTED]; Exhibit 1, pages 8-9, 17). Appellant's representative argues that the time allotted for assistance with taking medication is insufficient because it takes longer than 2 minutes per day to help Appellant with his medication. (Testimony of [REDACTED]).

This Administrative law Judge would again note that services such as supervising, monitoring, reminding, guiding and encouraging are expressly excluded from HHS. ASM 363, pages 14-15 of 24. In any event, by ranking Appellant a "3", ASW [REDACTED] found that Appellant can take "all medication if someone assists in measuring dosage or prepares administration schedule." ASW 365, page 2 of 2. However, such physical assistance would clearly require more than two minutes a day in light of Appellant's multiple medications, the fact that he takes different medications at different times of the day, and the fact that his provider has to inject some of his medications. Accordingly, the time authorized for assistance with taking medication is clearly insufficient and the Department's reduction of time with respect to that task is reversed.

Meal Preparation and Cleanup

Appellant further disputes the allocation of 30 minutes per day, 7 days a week, of HHS for assistance with meal preparation and cleanup. ASW [REDACTED] ranked Appellant a "5" for that task and assigned HHS on the basis that Appellant cannot cook, Appellant is on a restrictive diet, and Indian dishes such as the ones Appellant eats take a long time to cook. (Exhibit 1, pages 9, 11, 18). ASW [REDACTED] also testified that she prorated the times for assistance with meal preparation and cleanup pursuant to Department policy. (Testimony of ASW [REDACTED]). Appellant and his representative/provider argue that the hours should not be prorated because [REDACTED] prepares her and her father's meals separately. (Testimony of [REDACTED]). [REDACTED] also testified that it takes her 2 to 3 hours a day to prepare her father's meals. (Testimony of [REDACTED]).

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:

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- 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)

It is undisputed that the Appellant is living with his daughter in a shared living arrangement. (Testimony of ██████████; Testimony of ASW ██████████). 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. While Appellant's representative credibly testified that she prepares her and her father's meals separately, ASM 363 do not provide for any exceptions

However, while ASW ██████████ testified that she prorated the times for meal preparation and cleanup by one-half, that does not appear to be the case. The maximum amount of HHS time a client can receive is 25 hours a month, ASM 363, page 4 of 24, and prorating that maximum amount by one-half leave 12 hours and 30 minutes of HHS per month. Appellant, however, is receiving 15 hours and 3 minutes of HHS per month for assistance with meal preparation and cleanup. (Exhibit 1, page 11). Therefore, to the extent the Department failed to follow the proration, it was generous in favor of the Appellant and Appellant can point to no error that harmed him with respect to HHS for meal preparation and cleanup. The Department's decision regarding meal preparation and cleanup is sustained

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Housework

ASW [REDACTED] ranked Appellant a “5” for housework and allocated 15 minutes per day, 2 days a week (2 hours and 9 minutes per month), for assistance with that task. (Exhibit 1, pages 9, 11). ASW Fanning also stated in her notes and rankings that Appellant is too weak to do housework. (Exhibit 1, pages 9, 17). Appellant disputes that time and his representative testified that she spends up to three hours a day doing housework, with half that time spent in Appellant’s room or bathroom and the other half spent in rooms they share. (Testimony of Appellant).

As a preliminary matter, this Administrative Law Judge would note that ASW [REDACTED] also testified that she prorated the HHS time authorized for housework by one-half pursuant to the mandatory Department policy. (Testimony of ASW [REDACTED]). Therefore, Appellant would be getting 4 hours and 18 minutes of HHS assistance per month for housework if the amount was not prorated by one-half as required by policy.

Given Appellant’s representative’s testimony, even such an un-prorated amount would be insufficient for Appellant as [REDACTED] testified that she spends three hours a day doing housework. The amount of time claimed by [REDACTED] would also dwarf the maximum amount allowed under policy, which is six hours a month for light housework. ASM 363, pages 3-4 of 34. [REDACTED] offered no further explanations or justification for why she spends three hours a day on housework and this Administrative Law Judge rejects her testimony on this issue. One bedroom and one bathroom need not take 90 minutes of housework a day; nor should the remainder of their home take an additional 90 minutes a day.

ASW [REDACTED] had an opportunity to view Appellant’s home and make a reasonable determination as to how much HHS time should be allocated for assistance with housework. Appellant has failed to show that the allocated time, properly prorated, was in error and the Department’s decision is sustained as it is reflective of Appellant’s need for physical assistance with housework.

Laundry

With respect to the IADL of laundry, ASW [REDACTED] ranked Appellant a “5” and allocated 14 minutes per day, 3 days per week, or 3 hours and 1 minute per month, of HHS assistance for that task. (Exhibit 1, pages 9, 11). Moreover, in her notes ASW [REDACTED] provided that Appellant could not walk to or carry his own laundry. (Exhibit 1, pages 11, 17). ASW [REDACTED] further testified that she prorated the HHS time for laundry by one-half pursuant to Department policy. (Testimony of ASW [REDACTED]). Therefore, Appellant would be getting 6 hours and 2 minutes of HHS assistance per month for laundry if the amount was not prorated by one-half.

Appellant and his representative argue both that the Department’s proration policy is inapplicable here and that the assigned time is insufficient. According to [REDACTED], she does their laundry separately and that it takes about 2 hours per week to do just Appellant’s laundry. (Testimony of [REDACTED]).

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However, as discussed above, the proration of IADLs is mandatory in light of the shared household. Moreover, there is no suggestion that laundry is a continuous process or that the total time period identified by Appellant's representative consisted of two hours of hands-on assistance. Based on the information available at the time of the decision and the Department's mandatory proration policy, the allocation of HHS time for laundry is sustained as it is reflective of Appellant's need for assistance with that activity.

Grooming/Shopping and Errands

ASW ██████████ allocated 20 minutes per day, 2 days a week, of assistance for shopping. (Exhibit 1, page 11). Appellant was not granted any HHS for assistance with grooming. (Exhibit 1, page 11). While Appellant challenges his HHS payments generally, neither he nor his representative specifically challenged the HHS time allocated for shopping or the denial of HHS for assistance with grooming during the hearing. Nor does there appear to be any evidence or basis for disputing those determinations. Therefore, the Department's decision with respect to those two tasks is affirmed.

Eating/Toileting

With respect to the tasks of eating and toileting, ASW ██████████ ranked Appellant a 1 and did not allocate any HHS assistance for those tasks. (Exhibit 1, pages 8, 11). During the hearing, Appellant's representative confirmed that Appellant did not require any assistance with those tasks. (Testimony of ██████████). Accordingly, the Department's decision with respect to eating and toileting is sustained.

TIME FRAME

Appellant also disputes the date his HHS payments became effective. According to Appellant's representative, she applied for HHS on behalf of Appellant in ██████████ ██████████ and the Department improperly delayed in responding to that application. Appellant therefore seeks HHS from ██████████. The Department, on the other hand, argues that Appellant's case was not referred until ██████████ and that it made Appellant's payments effective on that date.

As a preliminary matter, this Administrative Law Judge would note that it is not clear what specific services were performed during the time period in question. For example, while Appellant's representative focused on Appellant's vertigo and need for assistance with certain tasks because of that condition, she also testified that Appellant's vertigo only began recently and there is no suggestion that Appellant suffered from vertigo at the time he applied. Nor was there any specific testimony regarding what services were being performed and that lack of testimony makes the calculation of payment for past services impossible and precludes any award of back payments. Moreover, any award of back payments in this case would be further complicated by the possibility that Appellant's provider was, at times, using part of her check to pay other people to take care of Appellant. (Exhibit 1, page 14; Testimony of ██████████; Testimony of ASW ██████████).

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Even if the amount of past services could be determined, this Administrative Law Judge will not award payments for them in this case. Appellant bears the burden of proving by a preponderance of the evidence that the Department erred. Here, Appellant's representative argues that the Department erred by only awarding payments from [REDACTED] because she applied for benefits for Appellant months earlier. However, there is no evidence beyond [REDACTED] and [REDACTED] testimony in support of that argument and [REDACTED] credibly testified that the matter was first referred to the Department on [REDACTED]. ASCAP also supports [REDACTED] testimony. (Exhibit 1, page 14). Given that evidence and testimony, this Administrative Law Judge finds that Appellant has failed to meet his burden of proof and the Department's decision regarding when to start the HHS payments is affirmed.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly calculated the start date and amount of Home Help Services, with the exception of time authorized for assistance with taking medication. Based on the information available at the time of the decision, the HHS authorized for assistance with taking medication is insufficient and the Department's decision with respect to that task is reversed.

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: [REDACTED]

Date Mailed: 8/16/2011

***** 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.