

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

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IN THE MATTER OF:

██████████,

Appellant.

Docket No. 2011-40702 HHS  
Case No. 11793893

**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's chore provider, appeared and testified on Appellant's behalf. Appellant also testified on his own behalf. ██████████, Appeals Review Officer, represented the Department of Community Health. ██████████, Adult Services Supervisor, ██████████, Adult Services Worker (ASW), from the ██████████ DHS-District ██████████ 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 high blood pressure. Appellant also self-reported a kidney transplant. (Exhibit 1, page 17).
3. Appellant had been receiving 28 hours and 14 minutes of HHS per month, with a care cost of \$ ██████ per month. (Exhibit 1, page 13).
4. On ██████████, ASW ██████ conducted a home visit with Appellant. (Exhibit 1, pages 14-16).
5. Based on her assessment and information provided by Appellant, ASW ██████ decided to reduce the HHS hours authorized for assistance with housework, laundry, shopping, and meal preparation/cleanup. (Exhibit 1, pages 12-16; Testimony of ASW ██████).

6. After the reductions, Appellant would receive a total of 16 hours and 46 minutes of HHS per month, with a monthly care cost of \$134.16. (Exhibit 1, page 12).
7. On ██████████, the Department issued an Advance Negative Action Notice to Appellant indicating that his Home Help Services payments would be reduced to \$██████████ effective ██████████. The reason given in the notice for the reduction was that Appellant no longer required assistance with grooming or transferring. (Exhibit 1, pages 5-7).
8. On ██████████, the Department received Appellant's Request for Hearing. In that request, Appellant asserts that the authorized hours are insufficient and that his provider should also be compensated for gas money. (Exhibit 1, page 4).
9. On ██████████, the Department issued another Advance Negative Action Notice to Appellant. The second notice provided that the reason for the reduction given in the first notice was an error and that the reductions to housework, laundry, shopping, and meal preparation/cleanup were made to bring Appellant's case in compliance with policy. (Exhibit 1, pages 8-11).

### **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 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)

**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 and an HHS comprehensive assessment in accordance with Department policy. Following that assessment, the ASW reduced the HHS hours authorized for assistance with housework, laundry, shopping, and meal preparation/cleanup. Appellant disagrees with those reductions. 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 reduced Appellant's HHS payments based on the available information.

### Housework

With respect to the task of housework, ASW ██████████ reduced HHS from 42 minutes per day, 2 days a week, to 12 minutes a day, 3 days a week. (Exhibit 1, pages 12-13). According to ASW ██████████, she made that reduction to the recommended time for someone of Appellant's needs after observing Appellant's improvement in health. (Testimony of ASW ██████████). Appellant's representative/chore provider, however, argued that Appellant requires 1 hour of assistance per day, 3 days a week. (Testimony of ██████████). In support of that request, Appellant testified that he cannot do housework because he gets tired and out of breath. (Testimony of Appellant).

Here, ASW ranked Appellant a "3" in housework. (Exhibit 1, page 18). 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). Here, Appellant's claim of limited endurance was accepted by the ASW and Appellant received the recommended time for someone ranked a 3 in housework.

Workers allocate time for tasks 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

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time schedule (RTS) as a guide. ASW 363, page 4 of 24. Using those factors, ASW [REDACTED] allocated the recommended amount of time for assistance for a person ranked a 3 in housework. Appellant offers no basis for a higher rank or for departing from that recommended time. For example, while Appellant testified that he has numerous problems remaining from kidney transplant, he did not specifically identify any such problems or provide medical documentation regarding such issues. (Testimony of Appellant). Similarly, while Appellant's representative testified that Appellant just got out of the hospital after suffering from medical problems, neither he nor Appellant ever informed ASW [REDACTED] of any such problems. (Testimony of Appellant; Testimony of [REDACTED]).

Given the lack of support for Appellant's claims, in addition to ASW [REDACTED] findings and credible observations, Appellant has failed to meet his burden of demonstrating by a preponderance of the evidence that the Department erred. Accordingly, the Department's decision to reduce HHS for assistance with housework is sustained.

### **Laundry**

ASW [REDACTED] also reduced HHS for assistance with laundry from 20 minutes per day, 2 days a week, to 14 minutes per day, 2 days a week. (Exhibit 1, pages 12-13). As testified to by ASW [REDACTED], she reduced that time for laundry assistance to the recommended time because the previous allocation had been based on Appellant's kidney problems and those kidney problems were no longer present. (Exhibit 1, pages 14-15; Testimony of ASW [REDACTED]). Appellant's representative/chore provider asserts that Appellant requires 40 minutes of assistance with laundry once a week. (Testimony of [REDACTED]). According to Appellant, he requires such assistance due to his difficulty using with stairs and how easily he gets fatigued. (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, Appellant's claim of limited endurance was accepted by the ASW and Appellant received the recommended time for someone ranked a 3 in housework. (Testimony of ASW [REDACTED]). Appellant also testified that he has problems with mobility (Testimony of Appellant), but ASW [REDACTED] observed him walking without difficulty (Testimony of ASW [REDACTED]) and Appellant provided no medical evidence or support for his claim of problems with mobility. The Department's decision to reduce HHS for assistance with laundry is therefore affirmed as reflective of Appellant's need for physical assistance.

### **Shopping**

With respect to the task of shopping, ASW [REDACTED] reduced HHS from 35 minutes per day, 2 days week, to 10 minutes a day, 2 days a week. (Exhibit 1, pages 12-13). According to ASW [REDACTED], she made that reduction to the recommended time after

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observing Appellant's ability to move around. (Testimony of ASW ██████████). During the hearing, Appellant's representative/chore provider claimed that Appellant requires 1 hour of assistance per day, 2 days a week. (Testimony of ██████████). In support of that request, Appellant testified that he cannot go shopping by himself because he has no car. (Testimony of Appellant).

Given Appellant's testimony that the only reason he cannot shop for himself is that he does not own a car, he is not entitled to HHS for assistance with that task. Transportation is specifically identified as a service **not** covered by HHS. ASM 363, pages 14-15 of 24. The Department did not completely eliminate the assistance for shopping, but it could have given Appellant's lack of need for physical assistance. Therefore, the Department's reduction of time for assistance with shopping is affirmed.

### **Meal Preparation/Cleanup**

Appellant also disputes the reduction in HHS for assistance with meal preparation/cleanup from 50 minutes per day, 4 days a week, to 50 minutes per day, 3 days a week. (Exhibit 1, pages 12-13). ASW ██████████ testified and wrote in her notes that, while Appellant told her that the provider did not cook, she still ranked Appellant a "3" for meal preparation/cleanup and allocated the recommended time for assistance with that task given Appellant's minimal need for assistance. (Exhibit 1, pages 14-16; Testimony of ASW ██████████). Appellant's representative/chore provider testified that Appellant never said that the chore provider was not preparing meals and that Appellant requires 1 hour per day, 3 days a week, of assistance with this task. (Testimony of ██████████). Appellant also testified that his provider makes him lunch 3 days a week and that, when the provider is making him lunch, he makes enough so that Appellant can have leftovers for dinner. (Testimony of Appellant). Appellant further testified that he makes small breakfasts for himself. (Testimony of Appellant).

Both Appellant and ASW ██████████ agree that Appellant only requires assistance with meal preparation/cleanup 3 days a week. Nor does there appear to be any dispute, given Appellant's testimony, that Appellant should be ranked a 3 in meal preparation/cleanup as that ranking provides that Appellant "Requires another person to prepare some meals and assist with clean up, e.g., client can reheat food by someone else, can prepare simple meals or snacks." ASM 365, page 2 of 2. Appellant received the recommended time for someone ranked a 3 in meal preparation/cleanup (Testimony of ASW ██████████) and, as discussed above with respect to other tasks, Appellant's unsupported arguments offer no basis for departing from that recommended time or reversing the Department's reduction. Appellant has failed to meet his burden of demonstrating by a preponderance of the evidence that the Department erred and the Department's decision to reduce HHS for assistance with meal preparation/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 reduced Appellant's HHS payments based on the available information.

**IT IS THEREFORE ORDERED THAT:**

The Department's decision is AFFIRMED.

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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.