

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

P.O. Box 30763, Lansing, MI 48909
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IN THE MATTER OF:

Docket No. 2012-24687 HHS

██████████

██████████

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Appellant

_____ /

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ) 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 ██████████. ██████████, the Appellant's nephew and provider, represented him. The Appellant was present.

██████████, Appeals and Review Officer, represented the Department. ██████████, Adult Services Worker (ASW), appeared as witnesses for the Department. ██████████, Adult Services Supervisor, was present on behalf of the Department.

ISSUE

Did the Department properly determine 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. The Appellant is an ██████-year-old Medicaid beneficiary who has been participating in the Adult Home Help Services Program.
2. The Appellant has received payment assistance for bathing, grooming, dressing, transferring, medication, housework, laundry, shopping and meal preparation. (Department exhibit A)
3. The Appellant is diagnosed with COPD, arthritis, has balance problems, heart condition, dementia and is incontinent. (Department exhibit A)

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4. The Appellant has a documented history of falls, weakness and limited movement. (Department exhibit A)
5. The Appellant resides with his provider, who is his nephew.
6. The Appellant's case was scheduled for a redetermination, which was completed by the Department in ██████████.
7. The ASW completed a comprehensive assessment at a home call in ██████████, in conjunction with the review.
8. The ASW was informed at the home call the provider was performing laundry █ days per week, bathing and grooming █ days per week and shopping/housework █ days per week.
9. The ASW adjusted the number of days tasks are performed in the Department's computer system to reflect what he had been told at the assessment.
10. The system used by the department is set to divide the time paid for tasks among █ days of the week. A reduction in the number of days a task is paid without adjusting the time allowed per day results in a reduced time authorized for completion of tasks.
11. Following the home call in ██████████ the ASW reduced the HHS payment assistance authorized on behalf of the Appellant as a result of adjusting the number of days tasks are authorized.
12. The ASW did not determine the Appellant had fewer needs as a result of the assessment.
13. The ASW did not ascertain the Appellant is incontinent at the assessment.
14. The ASW received a DHS-54A Medical Needs form following his assessment. It states the Appellant is incontinent on it.
15. The Appellant is incontinent and has been receiving incontinent supplies through the Department of Community Health for approximately one year.
16. The Appellant's provider did not specifically inform the worker the Appellant is incontinent at the home call.
17. The provider has an increased amount of laundry to complete due to the Appellant's incontinence.

18. On ██████████ 2, the Department sent the Appellant an Approval Notice indicating he had been authorized to receive ██████████ per month in HHS assistance payments for a provider.
19. On ██████████ the Michigan Administrative Hearing System received the Appellant's request for hearing.

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 (ASM 120, 11-1-2011), pages 2-5 of 6 addresses the adult services comprehensive assessment:

INTRODUCTION

The DHS-324, Adult Services Comprehensive Assessment is the primary tool for determining need for services. The comprehensive assessment must be completed on **all open independent living services cases**. ASCAP, the automated workload management system, provides the format for the comprehensive assessment and all information will be entered on the computer program.

Requirements

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.
- The assessment may also include an interview with the individual who will be providing home help services.

- A new face-to-face assessment is required if there is a request for an increase in services before payment is authorized.
- A face-to-face assessment is required on all transfer-in cases before a payment is authorized.
- 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.
 - Use the DHS-26, Authorization to Release Information, when requesting client information from another agency.
 - Use the DHS-1555, Authorization to Release Protected Health Information, if requesting additional medical documentation; see RFF 1555. The form is primarily used for APS cases.
- Follow rules of confidentiality when home help cases have companion APS cases, see SRM 131 Confidentiality.
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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

ADLs and IADLs 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.

HHS payments may only be authorized for needs assessed at the 3 level or greater.

An individual must be assessed with at least one activity of daily living in order to be eligible to receive home help services.

Note: If the assessment determines a need for an ADL at a level 3 or greater but these services are not paid for by the department, the individual would be eligible to receive IADL services.

Example: Ms. Smith is assessed at a level 4 for bathing however she refuses to receive assistance. Ms. Smith would be eligible to receive assistance with IADLs if the assessment determined a need at a level 3 or greater.

See ASM 121, Functional Assessment Definitions and Ranks for a description of the rankings for activities of daily living and instrumental activities of daily living.

Time and Task

The specialist 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. When hours exceed the RTS rationale **must** be provided.

An assessment of need, at a ranking of 3 or higher, does not automatically guarantee the maximum allotted time allowed by the reasonable time schedule (RTS). **The specialist must assess each task according to the actual time required for its completion.**

Example: A client needs assistance with cutting up food. The specialist would only pay for the time required to cut the food and not the full amount of time allotted under the RTS for eating.

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

Proration of IADLs

If the client does not require the maximum allowable hours for IADLs, authorize only the amount of time needed for each task. Assessed hour for IADLs (except medications) must be prorated by **one half** in shared living arrangements where other adults reside in the home, as home help services are **only** for the benefit of the client.

Note: This does not include situations where others live in adjoining apartments/flats or in a separate home on shared property and there is no shared, common living area.

In shared living arrangements, where it can be **clearly** documented that IADLs for the eligible client are completed separately from others in the home, hours for IADLs do not need to be prorated.

Example: Client has special dietary needs and meals are prepared separately; client is incontinent of bowel and/or bladder and laundry is completed separately; client's shopping is completed separately due to special dietary needs and food is purchased from specialty stores; etc.

*Adult Services Manual (ASM) 120, 11-1-2011,
Pages 1-4 of 6*

The ASW completed a home call ██████████ and conducted an assessment. As a result of his assessment he learned certain tasks were completed less than █ days per week. Specifically, he was informed shopping and housework are performed █ days per week, bathing and grooming █ days per week and laundry █ days per week. He did not make a determination the Appellant's health or functional abilities had improved at all. He thereafter sought to have department records accurately reflect how often tasks are completed on behalf of the Appellant. He adjusted the number of days tasks are authorized to be completed in the Department's computer system. This resulted in a reduction in the payment authorized on behalf of the Appellant. The Worker sent an Advance Negative Action Notice to the Appellant. Thereafter he determined the amount of time authorized for Instrumental Activities of Daily Living (IADLs) was too low and adjusted it upward. At hearing the worker testified that he had discussed the number of days tasks are performed but not how long it took to complete each task.

The Appellant contested the reduction by stating the provider is performing a lot of work he is not compensated for. He stated his uncle (the Appellant) has dementia and is incontinent. He said he soils himself daily and he must bath him frequently. Also, laundry is increased due to the fact that he soils himself. He said they did not discuss toileting or incontinence at the assessment. He testified his uncle has been incontinent or one year and they are getting incontinent supplies through his Medicaid benefits. He further testified his wife answered bathing is █ days per week but she did not consider the sponge baths that he has to do daily due to incontinence, thus bathing is taking place in one form or another all █ days. He did not state grooming was inaccurate.

The Department stipulated at hearing the Department would restore the IADLs to previous levels and the Appellant agreed; therefore, it need not be addressed further in this Decision and Order.

This ALJ will address the reductions to bathing and grooming. The grooming was appropriately reduced to reflect what was reported at the assessment. It appears to be an adequate amount of time to accomplish the tasks, thus it need not be adjusted. The time for bathing does not appear sufficient to accomplish the goal given the facts brought out at hearing. The Appellant requires assistance cleaning himself everyday due to being incontinent. This ALJ believes there was a miscommunication at the assessment resulting in incomplete information being provided to the worker. The role of the hearing is not to assign blame or fault, rather to determine what the material facts are. The uncontested material fact is that the Appellant is actually incontinent. He is assisted with bathing daily. He is changed and provided incontinence assistance daily. His functional rank for incontinence is not accurate and must be changed. The time for bathing must be increased to reflect the time spent assisting the Appellant in maintaining hygiene now that he is incontinent. The worker sought to perform a complete comprehensive assessment and was newly assigned. There was not perfect communication at the assessment that simply resulted in reductions that cannot be supported by the material facts of the Appellant's medical needs and condition.

After consideration of the evidence of record, this ALJ finds the credible evidence supports a functional ranking of 4 for bathing assistance and 5 for incontinence. The number of days for bathing is actually 4, as well as for assistance with incontinence.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department has improperly reduced the Appellant's HHS assistance.

IT IS THEREFORE ORDERED that:

The Department's decision is REVERSED. The Department is ordered to adjust the functional ranks and payment authorization consistent with this decision.

Jennifer Isiogu
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:



Date Mailed: 5-14-12

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***** 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.