

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

IN THE MATTER OF:

██████████

Docket No. 2012-67160
Case No. ██████████
Hearing Date: ██████████

ADMINISTRATIVE LAW JUDGE: Jennifer Isiogu

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following Appellant's request for a hearing. After due notice, a telephone hearing was held on the above referenced date. The Appellant was represented by her legal guardian and mother, ██████████. The Appellant's case manager ██████████ served as a witness on her behalf. ██████████, roommate of the family was present at the hearing. Participants on behalf of the Department of Community Health (Department) included ██████████, Appeals and Review Officer and ██████████, Adult Services Worker.

ISSUE

Did the Department properly authorize the Appellant's HHS payment assistance?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Appellant was a ██████ year old Medicaid beneficiary and a recipient of Home Help Services (HHS).
2. The Appellant is diagnosed with mental retardation, cerebral palsy and suffers seizures. She has the cognitive status of an ██████ month old. She is non-ambulatory.
3. The Appellant is fully dependent on others to provider her care. She resides with her ██████ year old mother and a roommate.

4. On ██████████, the Appellant's Adult Services Worker was changed to a different Adult Services Worker. This worker completed an annual review.
5. The Adult Services worker implemented a reduction in time authorized for meal preparation following her review. The reduction instituted pro-ration of time because the Appellant lives in a shared household, The worker was also informed at review that she eats meals with her mother and does not have special food prepared on her behalf.
6. The reduction in meal preparation allowance resulted in a payment change from ██████████ per month to ██████████ per month.
7. On ██████████, the Department sent the Appellant notice that effective ██████████ the Appellant's payment would be reduced.
8. 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.

The Department of Community Health HHS Medicaid policy is found in the Department of Human Services Adult Services Manual (ASM) at ASM 100- 170. ASM 120, pp. 1-3 provides that HHS policy for comprehensive assessments. ASM 120 provides in pertinent part:

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 must 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-27, 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. This form is primarily used for APS cases.

- Follow rules of confidentiality when home help cases have companion adult protective services cases; see SRM 131, Confidentiality.

Functional Assessment

The **Functional Assessment** module of the **ASCAP** comprehensive assessment is the basis for service planning and for the home help services payment.

Conduct a functional assessment to determine the client's ability to perform the following activities:

Activities of Daily

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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

Home help payments may only be authorized for needs assessed at the level 3 ranking 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.

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.

Complex Care Needs

Complex care refers to conditions requiring intervention with special techniques and/or knowledge. These complex care tasks are performed on client's[sic] whose diagnoses or conditions require more management. The conditions may also require special treatment and equipment for which specific instructions by a health professional or client may be required in order to perform.

- Eating and feeding.
- Catheters or legs bags.
- Colostomy care.
- Bowel program.
- Suctioning.
- Specialized skin care.
- Range of motion exercises.
- Peritoneal dialysis.
- Wound care.
- Respiratory treatment.
- Ventilators.
- Injections.

When assessing a client with complex care needs, refer to the complex care guidelines on the adult services home page.

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.**

IADL Maximum Allowable Hours

There are monthly maximum hour limits on all instrumental activities of daily living 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 hours 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 adjoined 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.

Responsible Relatives

Activities of daily living may be approved when the responsible relative is **unavailable** or **unable** to provide these services.

Note: Unavailable means absence from the home for an extended period due to employment, school or other legitimate reasons. The responsible relative must provide a work or school schedule to verify they are unavailable to provide care. **Unable** means the responsible person has disabilities of their own which prevent them from providing care. These disabilities must be documented/verified by a medical professional on the DHS-54A, Medical Needs form.

Legal Dependent

Do **not** approve shopping, laundry, or light housecleaning, when a responsible relative of the client resides in the home, **unless** they are unavailable or unable to provide these services. Document findings in the general narrative in ASCAP.

Do **not** approve shopping, laundry or light housecleaning, when a legal dependent of the client (minors 15-17) resides in the home,

unless they are unavailable or unable to provide these services.

**Expanded Home
Help Services
(EHHS)**

Expanded home help services exists if all basic home help services eligibility criteria are met and the assessment indicates the client's needs are so extensive that the cost of care cannot be Met within the monthly maximum payment level of \$549.99

**Michigan
Department of
Community
Health Approvals**

When the client's cost of care exceeds \$1299.99 for any reason, the adult services specialist must submit a written request for approval to the Michigan Department of Community Health(MDCH).

Follow the **Procedures for Submitting Expanded Home Help Requests** found on the Adult Services Home Page. Submit the request with all required documentation to:

Michigan Department of Community Health
Long Term Care Services Policy Section
Capital Commons Building, 6th Floor
P.O. Box 30479
Lansing, MI 48909

MDCH will provide written documentation (DCH-1785) of approval. A new request **must** be submitted to the Michigan Department of Community Health whenever there is an increase in the cost of care amount. A new request is **not** require[sic] if the cost of care decreases below the approved amount set by MDCH.

Note: If an expanded home help case closes and reopens within 90 days and the care cost remains the same, a new MDCH approval is **not** required.

ASM 120, pp 1-3.

On [REDACTED], the Appellant's Adult Services Worker completed a comprehensive assessment. This was her first assessment of the Appellant. She concluded that the time authorized for meal preparation should be pro-rated in order to bring the Appellant's case into compliance with policy. She resides in a shared household with her mother and another roommate. Additionally, the ASW had been informed at the assessment that the Appellant eats with her mother and no special food is prepared for her. The time for eating assistance remained unchanged, as well as the other tasks for which she is authorized to receive paid assistance. The ASW testified she assumed the

authorizations from the previous worker were accurate because nothing had been raised at the home call. The implementation of the pro-rating policy resulted in a reduction of approximately ██████████ in payment assistance for the Appellant. Her mother/legal guardian appealed.

The Appellant's mother and legal guardian appealed the reduction stating she does not have adequate time to complete the Appellant's care tasks with the new authorization. At hearing she testified she had never seen the worksheet authorizing the payment assistance and was shocked to see how little time she is given to complete her daughter's care tasks. She said she spends ██████████ minutes per day just grooming her hair. She spends ██████ minutes dressing her each morning and sometimes she has to change her clothing during the day because she soils herself. She has to assist with transferring and she spends more than ██████ minutes per day with this task. She did not dispute the time authorized for mobility. She said the housework is inadequate because she has to clean the floor after every meal and also has to change her sheet ██████ times per week. She also testified she spends extra time shopping because she has to go to special stores to get some of the special foods and she has to watch for sales. The Appellant is incontinent and diapers are delivered to the home for her use. The Appellant's case manager testified she does not receive Community Living Assistance hours because she is not trainable.

The documentation submitted by the Department indicates the Appellant is ranked a 5 in her functional status for each task except eating, which is ranked a 4. She has some limited capacity for self feeding. Otherwise, she is fully dependent on others for all aspects of her care.

Upon review of the evidence of record this ALJ finds the Department's action in reducing the time authorized for meal preparation is supported by the policy. However, the time for some Activities of Daily Living is inadequate to allow completion of the tasks. This determination is supported by the evidence of record from the Appellant's primary care provider. The testimony from the Appellant's mother/legal guardian is fully credible and not refuted with specific evidence that less time is needed to complete the care tasks the Appellant requires. While policy provides for certain limitations with respect to instrumental activities of daily living, regardless of how long the care taker may actually spend completing them, there is no such limitation with respect to the activities of daily living.

The task of grooming was testified to by the Appellant's mother. She said she spends ██████████ minutes per day caring for her hair. This is merely one aspect of grooming. She also has to brush her teeth for her ██████ times per day. The Appellant is fully dependent and cannot participate in this activity to any extent. The testimony that ██████ minutes per day is inadequate is credible. The time for grooming must be adjusted to ██████ minutes per day to allow for adequate hair, teeth and nail care.

The Appellant requires full care for the task of dressing. Her mother requires █████ minutes each morning to dress her. She must change her clothes due to her incontinence at times. She also must remove her clothes and change her into night clothes each day. The Appellant does not participate and her care taker is █████ years old. This ALJ finds it reasonable evidence that she spends in excess of █████ minutes per day dressing her daughter. The Department did not provide evidence refuting the testimony about how long it takes to dress the Appellant, thus evidence from the Appellant's guardian is left uncontested. The time for dressing must be adjusted to █████ minutes per day to allow for morning and evening changes and allow for periodic mid day changes resultant from incontinence.

The task of transferring was addressed at hearing by the Appellant's mother. She said she requires assistance from her roommate to lift her daughter. This is found credible. The Department should seek to enroll the roommate as a paid provider to address this issue or discuss use of a lift to aid the Appellant's mother in getting this task accomplished. Ten minutes per day to transfer a fully dependent █████ year old adult with the cognitive status of an █████ month of old does not appear adequate to this ALJ regardless of who is doing it. This must be fully addressed at the next assessment and the time authorized must be adequate to account for each transfer. If a second caretaker is used for transferring, then that care taker should be enrolled. If that person is unable to be enrolled then the only time the Appellant's guardian could be authorized for transferring is the time she actually spends performing this task.

The Appellant's mother addressed how she assists with eating. She testified credibly that the Appellant eats slowly and often. She must be assisted at every meal and she is quite messy with the foods she is able to self feed, resulting in extensive clean up after every meal. She specified she chews slowly and drops things. The Appellant eats █████ meals per day in addition to snacks. She does have Ensure █████ times per day. The █████ minute allowance per day even divided by 3 meals only allows for █████ minutes for each of those 3 meals. This is an inadequate amount of time according to the credible testimony that was not specifically refuted by the Department. This ALJ finds the authorization of █████ minutes per day is inadequate to meet the need, thus must be adjusted upward to at least █████ minutes per day to allow adequate time for 3 meals and 2 snacks to be eaten by the Appellant.

Based upon the above Findings of Fact and Conclusions of Law, the Administrative Law Judge concludes that the Department properly determined that the time allowed for meal preparation must be prorated. However, the Department's assessment did not result in an adequate authorization for many of the personal care tasks the Appellant requires to live in the community.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, PARTIALLY AFFIRMS and PARTIALLY REVERSES the Department's determination of need.

THE DEPARTMENT IS ORDERED TO DO THE FOLLOWING WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. Adjust the time authorized for the tasks of eating, grooming, dressing consistent with this opinion.
2. Determine how the Appellant is transferred, by whom, how long it takes for each transfer and how often she is transferred each day. Implement a change in payment
3. authorization and enrolled provider as appropriate according to the assessment of need.

Jennifer Isiogu
Administrative Law Judge
For James Haveman, Director
Michigan Department of Community Health

Date Mailed: _____

cc: [REDACTED]

NOTICE: The Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision 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 date of the rehearing decision.

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Appellant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the Appellant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at
Michigan Administrative Hearing System
Reconsideration/Rehearing Request
P. O. Box 30763
Lansing, Michigan 48909