

**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:

Docket No. 2012-11777 HHS

██████████,

Appellant

\_\_\_\_\_ /

**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 ██████████ ██████████ ██████████ sister, represented the Appellant. ██████████, the Appellant and ██████████, mother, were present. ██████████, Appeals Review Officer, represented the Department. ██████████, Adult Services Worker (ASW), and ██████████ ley, Adult Services Supervisor, appeared as witnesses for the Department.

**ISSUE**

Did the Department properly reduce the Appellant's Home Help Services (HHS) authorization?

**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 a ██████████ Medicaid beneficiary. (Exhibit B, page 6)
2. The Appellant has a history of multiple medical impairments including seizure disorder and mental retardation. (Exhibit A, page 12; Exhibit B, pages 5-7) A medicated shampoo was also prescribed recently. (Exhibit B, page 18)
3. The Appellant had been receiving a total of ██████████ of

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<sup>1</sup> The Appellant's HHS case was held in conjunction with 2012-11776 HHS. The Appellant in that case is Appellant's mother. The parties agreed to incorporate the hearing records for both cases by reference as the appeals involved the same types of reductions.

HHS per month for assistance with grooming, housework, laundry, shopping, meal preparation, medication and bathing with a monthly care cost of [REDACTED]. (Exhibit A, page 15)

4. The Appellant's sister is his HHS provider. (Exhibit A, pages 14-15)
5. The Appellant lives in a shared household with his sister/provider, an adult aunt, his mother who is also disabled and receives HHS with the same provider, and three minor children. (Exhibit A, page 11)
6. On [REDACTED], the Appellant's doctor completed a DHS-54A Medical Needs form listing diagnoses of mental retardation and seizure. The physician certified that the Appellant has a medical need for assistance with eating, toileting, bathing, grooming, dressing, taking medications, meal preparation, shopping, laundry and housework. (Exhibit B, page 5)
7. On [REDACTED] the ASW made a visit to the Appellant's home to conduct a HHS assessment with the Appellant and his provider. The ASW noted that the provider estimated the Appellant functions at an [REDACTED] year old level and reported a need for assistance with bathing, grooming, toileting, and medications. (Exhibit A, page 9)
8. The ASW determined that the Appellant's rankings should be adjusted and the HHS hours should be reduced. The Appellant was ranked as a level 1 for dressing, toileting, transferring, continence, eating, respiration and mobility; a level 2 for bathing, and as a level 3 for grooming, medication, housework, shopping, laundry, and meal preparation. The HHS hours for bathing were eliminated. The HHS hours for grooming, medication, laundry, shopping and meal preparation were reduced. (Exhibit A, pages 14-15)
9. On [REDACTED], the Department sent an Advance Negative Action Notice to the Appellant indicating his HHS case would be reduced to [REDACTED]. (Exhibit A, pages 5-8)
10. The Appellant requires hands on assistance with bathing for getting in/out of the tub and shampooing hair, grooming for shaving as well as hair and nail care, taking medications, laundry, shopping, housework, and meal preparation. The Appellant also requires non-hands on assistance with other activities, such as toileting and dressing.
11. On [REDACTED], a Request for Hearing was submitted on the Appellant's behalf. On [REDACTED] a Request for Hearing was re-submitted with the Appellant's signature. (Exhibit A, page 4; Exhibit C)

12. On [REDACTED] the Appellant's doctor completed a DHS-54A Medical Needs form listing diagnoses of mental retardation and seizure disorder. The physician certified that the Appellant has a medical need for assistance with bathing, grooming, dressing, taking medications, meal preparation, shopping, laundry, and housework. (Exhibit B, page 6)

### **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 363, 9-1-08), addresses the comprehensive assessment, functional assessment, time and task authorization, service plan development, necessity for services, and services not covered:

#### **COMPREHENSIVE ASSESSMENT**

The Adult Services Comprehensive Assessment (FIA-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. When hours exceed the RTS rationale must be provided.

### **IADL Maximum Allowable Hours**

There are monthly maximum hour limits on all IADLs except medication. The limits are as follows:

- 5 hours/month for shopping
- 6 hours/month for light housework
- 7 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.

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### Service Plan Development

Address the following factors in the development of the service plan:

- The specific services to be provided, by whom and at what cost.
- The extent to which the client does not perform activities essential to caring for self. The intent of the Home Help program is to assist individuals to function as independently as possible. It is important to work with the recipient and the provider in developing a plan to achieve this goal.
- The kinds and amounts of activities required for the client's maintenance and functioning in the living environment.
- The availability or ability of a responsible relative or legal dependent of the client to perform the tasks the client does not perform. Authorize HHS **only** for those services or times which the responsible relative/legal dependent is unavailable or unable to provide.

**Note: Unavailable** means absence from the home, for employment or other legitimate reasons. **Unable** means the responsible person has disabilities of his/her own which prevent caregiving. These disabilities must be documented/verified by a medical professional on the DHS-54-A.

- Do **not** authorize HHS payments to a responsible relative or legal dependent of the client.
- 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.
- The availability of services currently provided free of charge. A written statement by the provider that he is no longer able to furnish the service at no cost

is sufficient for payment to be authorized as long as the provider is not a responsible relative of the client.

- HHS may be authorized when the client is receiving other home care services if the services are not duplicative (same service for same time period).

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### **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.

**Exception:** DCH will accept a DHS-54A completed by a VA physician or the VA medical form in lieu of the medical needs form.

The medical professional certifies that the client's need for service is related to an existing medical condition. The medical professional does not prescribe or authorize personal care services.

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### **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.

*Adult Services Manual (ASM) 363, 9-1-2008,*  
Pages 2-15 of 24

The Department's policy was updated effective November 1, 2011. Regarding IADL maximum hours and proration, the policy states:

#### 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 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.

**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,*  
Page 4 of 6

The Appellant had been receiving a total of [REDACTED] of HHS per month for assistance with grooming, housework, laundry, shopping, meal preparation, medication and bathing with a monthly care cost of [REDACTED]. (Exhibit A, page 15) On [REDACTED] the Appellant's doctor completed a DHS-54A Medical Needs form listing diagnoses of mental retardation and seizures. The physician certified that the Appellant has a medical need for assistance with eating, toileting, bathing, grooming, dressing, taking medications, meal preparation, shopping, laundry and housework. (Exhibit B, page 5)

On [REDACTED], the ASW made a visit to the Appellant's home to conduct a HHS assessment with the Appellant and his provider. The ASW noted that the provider estimated that the Appellant functions at an [REDACTED] level and reported a need for assistance with bathing, grooming, medications and toileting. The ASW focused on the estimate that the Appellant functioned at the level of an [REDACTED] as well as history of attending a trainable school in the past. The ASW noted there was no diagnosis to indicate a need for assistance with assistance in/out of the tub. Reductions to laundry, shopping and meal preparation were based on the shared household. (Exhibit A, page 9; ASW Testimony)

The ASW determined that the Appellant's rankings should be adjusted and the HHS hours should be reduced. The Appellant was ranked as a level 1 for dressing, toileting, transferring, continence, eating, respiration and mobility; a level 2 for bathing, and as a level 3 for grooming, medication, housework, shopping, laundry, and meal preparation. The HHS hours for bathing were eliminated. The HHS hours for grooming, medication, laundry, shopping and meal preparation were reduced. (Exhibit A, pages 14-15) The Appellant disagrees with the reductions to his HHS authorization.

The Appellant's sister testified that she was only estimating what age the Appellant

functioned at. She explained that the doctor rushed when filling out the ██████████ DHS-54A Medical Needs form, and an updated form was provided. (Exhibit B pages 5-6) The Appellant's sister provided credible testimony and written statements that she provides some hands on assistance with bathing, specifically helping the Appellant in/out of the tub and shampooing his hair due to an infection resulting in prescribed medicated shampoo. Regarding grooming, she also described how the Appellant is not able to shave himself and cut his own nails. The evidence indicates that assistance is also provided with toileting and dressing, but at a functional ranking level of 2. Specifically, supervising toileting and selecting clothing. Significant hands on assistance with housework, shopping, laundry and meal preparation was described. The Appellant's sister also asserted that the IADLs of housework, shopping, laundry and meal preparation had already been reduced due to the shared household, therefore, the ASW should not have further reduced hours for these activities based on the shared household. The Appellant's sister also provides assistance with getting to doctor appointments, following doctor's orders after the appointment and taking medications. (Exhibit A, page 4; Exhibit B, pages 1-3; Exhibit C, page 2; Sister Testimony) However, assistance with going to doctors appointments is not covered under the HHS program.

The evidence does not support the ASW's determination to eliminate the HHS hours authorized for bathing, to reduce the HHS hours for grooming and medication, or the rankings assigned by the ASW for some of the ADLs. The Appellant's rankings should be adjusted to a level 3 for bathing and a level 2 for dressing and toileting. The Appellant's HHS authorization shall be adjusted to reinstate the previously authorized HHS hours for bathing, grooming, and medication.

The policy implemented by the Department recognizes that in most cases, certain tasks are performed that benefit all members who reside in the home together, such as cleaning, laundry, shopping and meal preparation. Normally, it is appropriate to pro-rate the payment for those tasks in a shared household, as others would have to clean their own home, make meals, shop and do laundry for themselves if they did not reside with the Appellant. Accordingly, the authorized hours for these activities are to be prorated under Department policy.

Department policy allows for a maximum of ██████ hours per month for housework, ██████ hours per month for shopping, ██████ hours per month for laundry and 25 hours per month for meal preparation, before proration. The previous time and task assignment supports the assertion that the HHS hours for at least housework and meal preparation were already prorated based on the shared household. (Exhibit A, page 15) The HHS authorization of ████████████████████ for housework was not changed, and is reflective of the household composition. (Exhibit A, pages 14-15) The ASW's determination to authorize only ██████ hour for laundry, ██████ minutes for shopping, and ████████████████████ for meal preparation per month can not be upheld. These reductions are far less than half of the maximums allowed under Department policy. The Appellant's needs for assistance with laundry, shopping, and meal preparation can not be met with the reduced hours. The HHS hours shall be adjusted to half of the maximums allowed for

laundry, shopping, and meal preparation.

**DECISION AND ORDER**

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

**IT IS THEREFORE ORDERED THAT:**

The Department's decision is REVERSED. The Appellant's rankings should be adjusted to a level 3 for bathing and a level 2 for dressing and toileting. The Appellant's HHS authorization shall be adjusted to reinstate the previously authorized HHS hours for bathing, grooming, and medication. The Appellant's HHS authorization shall be adjusted to ½ the maximums listed in policy for laundry, shopping, and meal preparation.

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Colleen Lack  
Administrative Law Judge  
for Olga Dazzo, Director  
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: \_\_\_\_\_ 3-2-12 \_\_\_\_\_

**\*\*\* 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.