

**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:

██████████,

Appellant

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Docket No. 2012-4588 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 ██████████. The Appellant appeared without representation. She had no witnesses. ██████████, Appeals Review Officer, represented the Department. Her witness was ██████████, ASW.

**ISSUE**

Did the Department properly reduce the 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. At the time of hearing the Appellant is a ██████-year-old female, Medicaid beneficiary. (Appellant's Exhibit 1)
2. The Appellant is afflicted with ulcerative colitis, OA, IDDM, asthma, valvular heart disease angio sarcoma/right leg amputation [unable to wear prosthesis]. (Department's Exhibit A, pp. 23, 24)
3. On ██████████, the ASW conducted an unannounced, yearly redetermination for the Appellant that led to a reduction in services through the elimination of the tasks of mobility, transferring, housework, laundry, shopping, meal preparation and the reduction of bathing, grooming and dressing. (Department's Exhibit A, pp. 13-21)
4. On ██████████, the ASW sent the Appellant an advance negative action notice informing her that HHS would be reduced effective ██████████ – based on her determination of less need for services. (Department's Exhibit A, pp. 2, 5, 6)

5. The Appellant was released from the hospital █-days before this hearing. She underwent a heart valve operation and was advised that she has COPD. She received bathing services from her choreprovider and said she needs HHS services more now than she ever did. (See Testimony)
6. The instant appeal was received by the Michigan Administrative Hearing System for the Department of Community Health on █. (Appellant's Exhibit #1)

### **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 Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

Home Help Services 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.

### **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 customer in his/her place of residence.
- An interview must be conducted with the caregiver, if applicable.
- Observe a copy of the customer'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 re-determination.

- A release of information must be obtained when requesting documentation from confidential sources and/or sharing information from the agency 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 customer'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. (Emphasis supplied)

Adult Service Manual (ASM), §363, pp. 2, 3 of 24, 9-1-2008.

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The Department witness testified that on annual assessment she observed the Appellant move about her residence and determined that she was in a much improved condition relative to the ADL tasks of mobility, transferring and IADLs of housework, shopping and meal preparation – so she eliminated those tasks and reduced the ADLs of bathing, grooming and dressing – based on her observation and interview with the Appellant.

The Appellant testified that adaptive reaching tools don't work in her environment and that she is unable to houseclean above countertop level owing to her confinement to a wheelchair. She added that the babysitting of her grandson was not a regular service. She added that she has a fear of falling in the shower and needs more assistance because of her size, weakened condition,<sup>1</sup> and fear of falling. However, she said she could transfer into the shower adequately.

As for the remaining areas of grooming and dressing the ASW said that the Appellant had no real problems. The ASW testified that the Department does not provide supervision services “just because of a fall risk.”

On review, I found the Appellant's testimony credible and controlling on the issue of needing additional time for bathing - based on the Appellant's descriptive testimony. However, with

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<sup>1</sup> Her weakened condition was a consequence of her recent operation and hospitalization – not at issue on [REDACTED].

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regard to her recent hospitalization the Appellant is reminded that it is her duty to inform the ASW of this new development per her Medicaid application/contract and seek reassessment for her newly weakened condition. The Appellant's present status, I believe, requires reinstatement of the HHS grant for bathing – and on reassessment could likely cover additional areas as well. I believe that the remainder of the HHS reductions [observed on [REDACTED]] were well founded, accurately observed and properly issued under the standards of a comprehensive assessment.

The following item[s] summarize the ADL reduction[s] and the ALJ's disagreement:

- Bathing was improperly reduced as the clear weight of the evidence showed that the Appellant needs hands on assistance to bathe her “back side” in addition to the difficulties imposed by her leg amputation and overall size. I would reinstate that service to its prior level of 25 minutes per day. Proposed ranking is 4 as she requires greater assistance than just getting into the shower and lathering up.

The following items summarize the ADL/IADL status and the ALJ's agreement:

- Dressing was properly reduced. The Appellant demonstrated the ability to dress her upper body, while showing the need for assistance with putting on pants and stocking. Proposed ranking is 3.
- Grooming was properly reduced to reflect toe nail maintenance owing to her physical logistics. Again, her upper body strength and coordination provided adequate demonstration of the ability to tend to her hair and other aspects of grooming. Proposed ranking 3.
- Transferring was eliminated based on the ASW observation and the Appellant's self report.
- Mobility was removed based on the ASW observation of the Appellant's skill in the operation of her electric wheelchair.
- Housework was eliminated based on the Appellant's demonstration of flexibility, reach and grasp [using tools] capability while being observed by the ASW – although on reassessment I believe the issue of height/cleaning should be reexamined based on the Appellant's objection to a height extension cleaning tool as opposed to a reach tool.
- Shopping was properly eliminated based on the ASW notes and testimony. I thought the Appellant demonstrated full mobility to shop and transport bags of groceries back to her apartment.
- Meal Preparation was properly eliminated. I thought the Appellant demonstrated the ability to prepare food at kitchen counter height as well as having access to meals prepared at her complex during the noon hour – whether she elected to participate with that service or not. She said the cost was waived if necessary.

On review of the testimony and the evidence the Administrative Law Judge finds that the comprehensive assessment was deficient in the reduction of time for bathing which I would reinstate to the prior level. The remainder of reductions and service eliminations showed an otherwise alert, oriented and able adult – albeit confined to a wheelchair – but able to take on

most chores as they presented. Absent a special tool not discussed at hearing, I thought the Appellant made a convincing argument for reinstating her original bathing allowance.

The Appellant must further understand that the HHS program is not a static award of home help services – it is anticipated that hands of services will wax and wane depending on physical status of the recipient. Some people improve with time – some do not. Furthermore, the Appellant must appreciate that it is her duty to report any change in condition which could merit reassessment – such as her recent hospitalization and heart operation of which the ASW had no knowledge.

The Appellant is neither totally disabled nor totally dependent. She requires some hands on assistance with the tasks of grooming, dressing and bathing. If the Department opts to reassess in the near future the issue of housecleaning with an extension-wand should be evaluated as per the Appellant's concern.

Based on the record established today the Appellant has preponderated her burden of proof to demonstrate her need for reinstatement of the ADL of bathing at its prior level. The remaining ADLs were properly assessed or eliminated.

**DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department improperly reduced the Appellant's HHS payment with regard to the ADL of bathing.

**IT IS THEREFORE ORDERED** that:

The Department's decision is AFFIRMED, in part, and REVERSED, in part.

**IT IS THEREFORE FURTHER ORDERED** that:

The Department shall reinstate the Appellant's ADL of Bathing to the level in place prior to [REDACTED], assessment level.

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Dale Malewska  
Administrative Law Judge  
for Olga Dazzo, Director  
Michigan Department of Community Health

cc:

[REDACTED]

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Date Mailed: 1/18/2012

**\*\*\* 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.