

**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) 373-4147

IN THE MATTER OF:

██████████,

Appellant

Docket No. 2012-74334 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 ██████████, ██████████, mother and Guardian, represented the Appellant. ██████████, the Appellant, was present. ██████████, father, ██████████, family friend, and ██████████, family friend, appeared as witnesses for the Appellant. ██████████, Appeals Review Officer, represented the Department. ██████████, Adult Services Worker ("ASW"), ██████████, Adult Services Supervisor, and ██████████, RN Michigan Department of Community Health ("MDCH") Home Help Services Program, appeared as witnesses for the Department. Shelby Nemecek was also present.

ISSUE

Did the Department properly reduce the Appellant's Expanded Home Help Services ("EHHS") 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 who has been authorized for Home Help Services ("HHS").
2. The Appellant has multiple diagnoses, including traumatic brain injury, spastic quadriplegia, tracheostomy, and intractable epilepsy. The Appellant is unable to speak, unable to hold his head up and unable to swallow. (Exhibit 1, page 18; Exhibit 2, pages 2-5)
3. The Appellant lives with his parents and his mother is the enrolled HHS provider. (Exhibit 1, pages 17 and 26-31, Exhibit 3, page 1; Exhibit 4, page 1)

██████████
Docket No. 2012-74334 HHS
Decision and Order

4. HHS payments of \$ ██████ per month or greater are considered EHHS. EHHS payments over \$ ██████ per month require approval from the MDCH. (Adult Services Manual (ASM) 140 11-1-2011 page 2)
5. From ██████████ through ██████████, the Appellant received EHHS with a total monthly care cost of \$ ██████. The services included in this HHS authorization were bathing, grooming, dressing, toileting, transferring, eating, mobility, medication, housework, laundry, shopping, meal preparation, eating or feeding, suctioning, specialized skin care and range of motion exercises totaling 199 hours and 8 minutes per month. (Exhibit 1, page 26; Exhibit 4, page 1)
6. On ██████████, the ASW requested approval from MDCH to increase in the Appellant's EHHS authorization to \$ ██████. The RN requested additional information on ██████████, which was sent on ██████████. (Exhibit 1, pages 15-16; Exhibit 3, page 1; RN Testimony)
7. On ██████████, the request for an increase was denied and the EHHS authorization was reduced to \$ ██████ by the RN. (Exhibit 1, page 15; Exhibit 1, page 30)
8. On ██████████, the Department sent the Appellant an Advance Negative Action Notice which informed him that effective ██████████, the HHS case would be reduced to \$ ██████ per month. (Exhibit 1, pages 7-10)
9. On ██████████, the RN again reviewed the case and authorized an increase in the HHS hours for tube feeding from 48 minutes per day to 72 minutes per day. (Exhibit 1, page 15)
10. On ██████████, the Department sent the Appellant a Services and Payment Approval Notice of an increase in payment to \$ ██████ per month effective ██████████. (Exhibit 1, pages 11-12)
11. On ██████████, the Appellant's request for hearing was received by the Michigan Administrative Hearing System. (Exhibit 1, pages 3-5)

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) 105, 11-1-11, addresses HHS eligibility requirements:

Requirements

Home help eligibility requirements include all of the following:

- Medicaid eligibility.
- Certification of medical need.
- Need for service, based on a complete comprehensive assessment (DHS-324) indicating a functional limitation of level 3 or greater for activities of daily living (ADL).
- Appropriate Level of Care (LOC) status.

Medical Need Certification

Medical needs are certified utilizing the DHS-54A, Medical Needs form and must be completed by a Medicaid enrolled medical professional. A completed DHS-54A or veterans administration medical forms are acceptable for individual treated by a VA physician; see ASM 115, Adult Services Requirements.

Necessity For Service

The adult services specialist is responsible for determining the necessity and level of need for home help services based on:

- Client choice.
- A completed DHS-324, Adult Services Comprehensive Assessment. An individual must be assessed with at least one activity of daily living (ADL) 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 IADL's if the assessment determines a need at a level 3 or greater.

- Verification of the client's medical need by a Medicaid enrolled medical professional via the DHS-54A. The client is responsible for obtaining the medical certification of need; see ASM 115, Adult Services Requirements.

Adult Services Manual (ASM) 105,
11-1-2011, Pages 1-3 of 3

Adult Services Manual (ASM) 120, 5-1-12, addresses the 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 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. The form is primarily used for APS cases.
- Follow rules of confidentiality when home help cases have companion APS 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 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.

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

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 IADL's 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 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 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) 101, 11-1-11, addresses services not covered by HHS:

Services not Covered by Home Help

Home help services must **not** be approved for the following:

- Supervising, monitoring, reminding, guiding, teaching 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 (such as house cleaning, laundry or shopping).
- Services provided by another resource at the same time (for example, hospitalization, MI-Choice Waiver).
- Transportation - See Bridges Administrative Manual (BAM) 825 for medical transportation policy and procedures.
- Money management such as power of attorney or representative payee.
- Home delivered meals.
- Adult or child day care.
- Recreational activities. (For example, accompanying and/or transporting to the movies, sporting events etc.)

Note: The above list is not all inclusive.

*Adult Services Manual (ASM) 101, 11-1-2011,
Pages 3-4 of 4.*

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The ASW requested approval from MDCH to increase in the Appellant's EHHS authorization to \$██████████. The RN requested additional information on ██████████, which was sent on ██████████. (Exhibit 1, pages 15-16; Exhibit 3, page 1) On ██████████, the request for an increase was denied and the EHHS authorization was reduced to \$██████████ by the RN. (Exhibit 1, page 15; Exhibit 1, page 30) On ██████████, the Department sent the Appellant an Advance Negative Action Notice which informed him that effective ██████████, the HHS case would be reduced to \$██████████ per month. (Exhibit 1, pages 7-10) On ██████████, the RN again reviewed the case and

Docket No. 2012-74334 HHS
Decision and Order

authorized an increase in the HHS hours for tube feeding from 48 minutes per day to 72 minutes per day. (Exhibit 1, page 15) On [REDACTED], the Department sent the Appellant a Services and Payment Approval Notice of an increase in payment to \$ [REDACTED] per month effective [REDACTED]. (Exhibit 1, pages 11-12)

The Appellant disagrees with the reduction to his EHHS authorization.

Bathing, Grooming, Dressing, Transferring, Mobility, Medications, Specialized Skin Care

The HHS hours for bathing, dressing, transferring, mobility, medication and specialized skin care remained the same on all four EHHS time and task authorizations. (Exhibit 1, pages 27-30; Exhibit 3, page 1; Exhibit 4, page 1) The Appellant is ranked as a functional level 5 for bathing, dressing, transferring, mobility and medication. (Exhibit 1, pages 20-22) The ASW did not recommend any increases in the HHS hours for these activities, nor did the RN decrease the HHS authorization for these activities. There was no evidence presented indicating these HHS hours authorized for bathing, grooming, dressing, transferring, mobility, medications, or specialized skin care were not sufficient to meet the Appellant's needs. The HHS authorizations for these activities are upheld.

Housework, Shopping, and Laundry

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 the other household members would still have to clean their own home, make meals, shop and do laundry for themselves if they did not reside with the Appellant. The HHS program will not compensate for tasks that benefit other members of a shared household. Accordingly, the authorized hours for these activities must be prorated under Department policy. However, exceptions can be made when there is clear documentation to justify performing an activity separately, such as incontinence.

Department policy allows for a maximum of 6 hours per month for housework, 5 hours per month for shopping, 7 hours per month for laundry and 25 hours per month for meal preparation. The Appellant is ranked as a level 5 for housework, laundry, shopping and meal preparation. (Exhibit 1, pages 20-22) The Appellant lives with his parents. (Exhibit 1, page 17) After proration for the shared household, the Department authorized half the maximums allowed by policy for housework and shopping, 3 hours and 1 minute per month for housework, and 2 hours and 30 minutes per month for shopping. The evidence established that the Appellant has incontinence. Accordingly, the HHS hours for laundry were exempted from proration and the Appellant was authorized 7 hours and 1 minutes per month for laundry. The HHS hours for these activities remained the same on all four EHHS time and task authorizations. (Exhibit 1, pages 27-30; Exhibit 3, page 1; Exhibit 4, page 1) The HHS authorizations for housework, shopping and laundry were appropriate under the Adult Service Manual policy and are upheld.

Meal Preparation, Eating, and Eating and Feeding

The previously authorized 5 minutes per day (2 hours and 30 minutes per month) for meal preparation and 15 minutes per day (7 hours and 31 minutes per month) for eating were eliminated. (Exhibit 1, pages 27-30; Exhibit 3, page 1; Exhibit 4, page 1) As discussed above, meal preparation is an IADL that would be subject to proration in a shared household. The Appellant is ranked as a level 5 for eating and meal preparation. The functional justification ranking notes indicate the Appellant used to eat pudding, yogurt, blended pizza, potatoes, etc., which were spoon fed, in addition to the tube feedings. Some meal preparation was authorized because some foods were blended. However, a note dated **██████████ indicates the Appellant cannot swallow and now all feeding is tube feeding. (Exhibit 1, pages 21-22) Accordingly, the HHS hours for meal preparation and eating were eliminated.

The assistance with tube feeding was covered in the complex care activity of eating and feeding assistance. The Appellant had been authorized 1 hour and 12 minutes per day (36 hours and 7 minutes per month) for eating and feeding assistance. The ASW did not recommend any change to his authorization. (Exhibit 4, page 1; Exhibit 3, page 1) The RN initially decreased the HHS hours for eating and feeding assistance to 48 minutes per day (24 hours and 5 minutes per month). (Exhibit 1, page 30) On the second review, the RN returned the HHS hours for eating and feeding assistance to the previously authorized 1 hour and 12 minutes per day (36 hours and 7 minutes per month). (Exhibit 1, page 27)

The HHS hours for eating and meal preparation were eliminated in the Time and Task authorization prepared by the ASW recommending the overall increase in the Appellant's EHHS authorization. (Exhibit 3, page 1) These eliminations were appropriate because the Appellant could no longer swallow and was no longer being spoon fed some foods in addition to the tube feedings. The HHS hours for eating and feeding assistance for the tube feeding were returned to the originally authorized 1 hour and 12 minutes per day (36 hours and 7 minutes per month). No increase in the HHS hours for eating and feeding assistance had been recommended by the ASW. (Exhibit 3, page 1) There was no evidence presented indicating the HHS hours for eating and feeding assistance were insufficient to meet the Appellant's needs for the tube feedings. The determination to eliminate the HHS hours for eating and meal preparation, as well as to return the authorization for eating and feeding assistance to 1 hour and 12 minutes per day (36 hours and 7 minutes per month) are upheld.

Toileting

The Appellant had been receiving 1 hour and 30 minutes per day (45 hours and 9 minutes per month) for toileting assistance. (Exhibit 4, page 1) The Appellant is ranked as a functional level 5 for toileting. The ASW did not recommend any change to the HHS hours for toileting and the time authorized included assistance utilizing a urinal, changing incontinence products and for a bowel program. (Exhibit 3; Exhibit 4; ASW Testimony) The RN reduced the HHS authorization for toileting to 40 minutes per day

Docket No. 2012-74334 HHS
Decision and Order

(20 hours and 4 minutes per month). (Exhibit 1, pages 27-30) This reduction appears to be based on the RN's understanding that the Appellant utilized incontinence products now rather than the urinal because assistance with the urinal was not productive. (Exhibit 1, page 32; RN Testimony)

The Appellant's mother testified the Appellant can use a urinal. Toileting in this manner helps prevent skin breakdown and is a matter of dignity. The Appellant's mother has worked in a nursing home and has seen the skin breakdown that can occur with sitting in a wet diaper. (Mother Testimony)

The functional ranking notes available to the RN indicated the Appellant is assisted with a urinal, has a bowel program and utilizes incontinence products because he has some bowel and bladder accidents. (Exhibit 3, page 2; Exhibit 4, page 2) The Appellant's mother's testimony confirmed that the Appellant can utilize a urinal, with assistance, for toileting. (Mother Testimony) Further, the ASW testified she saw the Appellant's commode chair, which is missing the strap that holds his head. Accordingly, the Appellant will require assistance to hold his head while he is in the commode chair until the strap can be replaced. (Exhibit 3; Exhibit 4; ASW Testimony) The reduction to the HHS hours for toileting is reversed.

Suctioning

The Appellant had been receiving 7 minutes per day (3 hours and 31 minutes per month) for suctioning assistance. (Exhibit 4, page 1) The ASW recommend an increase to 1 hour and 6 minutes per day (33 hours and 7 minutes per month). The complex care needs note indicates that since [REDACTED], the Appellant has a trach and must be suctioned every two hours and it takes 5-6 minutes each time. (Exhibit 3; Exhibit 4; ASW Testimony)

The RN authorized an increase in HHS hours for suctioning, but only to 30 minutes per day (15 hours and 3 minutes per month). (Exhibit 1, pages 27-30) The RN testified an individual can not breathe while a trach is being suctioned. Accordingly, suctioning does not take even 2-3 minutes each time. Rather, the RN estimated about 30-45 seconds to complete suctioning. (RN Testimony)

The Appellant's mother indicated that the equipment is kept by the Appellant and suctioning with the catheter is what the RN testified. However, in addition to regular suctioning with the catheter, the inner cannula is cleaned every time. Further, the Appellant requires suctioning assistance very frequently, up to every half hour or even every 5-10 minutes. (Mother Testimony)

The RN's authorization of 30 minutes per day appears to be an estimate because she did not have any information on the type of trach nor the frequency of suctioning. (Exhibit 1, page 35) There is no evidence the RN requested further additional information to clarify the Appellant's needs regarding suctioning prior to authorizing estimated times. The RN's testimony indicates she only included time for suctioning with a catheter and did not consider having to clean an inner cannula. Removing, cleaning,

and re-inserting the inner cannula in addition to using a catheter to suction out the trach would be a more involved process. Accordingly, the evidence indicates the HHS authorization of 30 minutes per day for suctioning is not sufficient to meet the Appellant's needs. The HHS authorization for suctioning should be increased to the 1 hour and 6 minutes per day (33 hours and 7 minutes per month) recommended by the ASW.

Range of Motion Exercises

The Appellant had been receiving 1 hour per day (30 hours and 6 minutes per month) for range of motion exercises. (Exhibit 4, page 1) The ASW recommend an increase to 1 hour and 30 minutes per day (45 hours and 9 minutes per month). The complex care needs note indicates that range of motion exercises were completed on the Appellant's fingers, hands, arms, legs, and hips. The note further indicated that since ██████████, the Appellant has not been able to move his limbs at all and his muscles are constricting, therefore, the provider is doing more range of motion exercises. (Exhibit 3, page 3) The ASW testified that a standing board is also utilized to give the Appellant some time weight bearing. (ASW Testimony)

The RN testified that range of motion exercises for a person in the Appellant's condition are helpful to keep joints limber. However, performing more range of motion exercises is not much more significant and the documentation indicated the Appellant is wearing braces. Accordingly, the RN did not authorize an increase in the HHS hours for range of motion exercises. The HHS hours for range of motion exercises remained at 1 hour per day (30 hours and 6 minutes per month). (Exhibit 1, page 127)

The Appellant's mother testified that in addition to the range of motion exercises, the Appellant spends one hour per day on the standing table. This helps with circulation and strength. (Mother Testimony)

The ASW made a detailed note regarding the range of motion exercises being done at the time of this review, which did not include standing. (Exhibit 3, page 3) The documentation does not indicate the tilt table was used for standing until a new assessment was completed ██████████. It appears the Appellant had improvements in several areas at the time of this home visit, including being able to signal the need for toileting assistance and moving his hands in time to music. (Exhibit 1, pages 14-15) However, it appears these changes were more recent and this new information was not documented until after the RN's review. Accordingly, it can be considered in determining the appropriate ongoing HHS authorization, but not for the determinations at issue in this appeal. Further, additional clarification would be needed regarding the standing table and how much hands on assistance is provided during the time the Appellant utilizes this equipment.

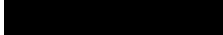
The RN's testimony indicates that in general, increasing the range of motion exercises for the limbs would not be expected to have significant results. (RN Testimony) There was no documentation that the increase in the Appellant's case was part of a prescribed treatment plan for the Appellant and expected to have significant results. The HHS

authorization of 1 hour per day (30 hours and 6 minutes per month) for range of motion exercises is upheld based on the information available at that time.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department improperly assessed the HHS the Appellant's HHS authorization for the activities of toileting and suctioning based on the available information.

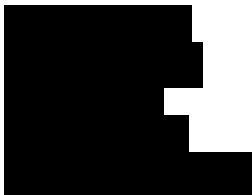
IT IS THEREFORE ORDERED THAT:

The Department's decision is PARTIALLY AFFIRMED AND PARTIALLY REVERSED. The determinations regarding bathing, grooming, dressing, transferring, eating, mobility, medications, housework, shopping, laundry, meal preparation, eating and feeding assistance, specialized skin care and range of motion exercises are upheld. The determinations regarding toileting and suctioning are reversed. The Department shall adjust the Appellant's HHS authorization as follows, retroactive to the  effective date:

- Toileting 1 hour and 30 minutes per day (45 hours and 9 minutes per month)
- Suctioning 1 hour and 6 minutes per day (33 hours and 7 minutes per month)

lsl
Colleen Lack
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

cc:



Date Mailed: 3/5/2013

***** 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.