

**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. 2012-66453 HHS

██████████

██████████

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 ██████████. Attorneys ██████████ and ██████████ represented the Appellant. ██████████, the Appellant, appeared and testified. ██████████, father, ██████████, mother, and ██████████ RN, appeared as witnesses for the Appellant. ██████████, Appeals Review Officer, represented the Department. ██████████, Adult Services Worker ("ASW"), ██████████ Adult Services Supervisor, ██████████ RN Michigan Department of Community Health ("MDCH") Home Help Services Program, and ██████████ Manger LTC Policy Section, appeared as witnesses for the Department.

ISSUE

Did the Department properly assess the Appellant's Expanded Home Help Services ("EHHS") case?

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") since ██████████ (Exhibit 1, page 23)
2. 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)
3. The Appellant has been diagnosed with C4-C5 quadriplegia and decubitus/pressure ulcers. (Exhibit 1, pages 23, 28, and 46; Exhibit 3, pages 2-3 and 9)

██████████
Docket No. 2012-66453 HHS
Decision and Order

4. The Appellant lives with his parents. (Exhibit 3, page 2)
5. The Appellant's enrolled HHS providers are the Appellant's mother and an agency, Home Care Associates Inc. (Exhibit 1, page 52)
6. On ██████████, the ASW wrote a request for an increase in the Appellant's EHHS authorization to MDCH noting that the Appellant's parents would be unavailable to provide care from ██████████ and while the Appellant is trying to make arrangements for another family member or friend to assist him for at least part of the time, if this is not possible he will need to rely on the agency during this time period. A contract and estimates for the agency services, an ██████████ DHS-54A Medical Need form, and the ██████████ DHS-324 Adult Services Comprehensive Assessment Form were attached. (Exhibit 3, pages 2-13)
7. The ASW's proposed time and task authorization for the Appellant had an EHHS total monthly care cost of ██████████. This monthly authorization for the Appellant's mother included ██████████ hours and ██████████ minutes of services with a care cost ██████████. This monthly authorization for the agency provider included ██████████ hours and ██████████ minutes of services with a care cost of ██████████. The services included in this EHHS authorization were bathing, grooming, dressing, transferring, eating, medication, housework, laundry, shopping, meal preparation, specialized skin care, range of motion exercises, bowel program, and toileting. (Exhibit 3, pages 12-13)
8. The Appellant was ranked at functional level 2 for mobility and functional level 5 for bathing, grooming, dressing, toileting, transferring, eating, medication, housework, shopping, laundry and meal preparation. (Exhibit 3, page 11)
9. MDCH RN had a phone conference with the Appellant and his parents. (MDCH RN Testimony)
10. On ██████████, the Appellant submitted responses to a questionnaire from the MDCH RN to the ASW. (Exhibit 1, pages 13-14)
11. There was an authorization for the agency to provide care while the Appellant's parents were on vacation. (MDCH RN Testimony)
12. On ██████████, the MDCH issued a Policy Decision indicating an EHHS approval for ██████████ hours and ██████████ per month starting ██████████. (Exhibit 1, page 22)
13. The reduced EHHS authorization from the MDCH RN included ██████████ hours and ██████████ minutes of services from the Appellant's mother with a monthly care cost of ██████████ and ██████████ hours and ██████████ minutes of services from the agency with a monthly care cost ██████████. The services included in this EHHS authorization were bathing, grooming, dressing, transferring, eating,

mediation, housework, laundry, shopping, meal preparation, specialized skin care, range of motion exercises, bowel program, wound care, and catheters or leg bags. (Exhibit 1, pages 25-26)

14. On ██████████, the Department sent the Appellant an Advance Negative Action Notice, which informed him that effective ██████████ the EHHS authorization would be reduced to ██████████ per month. (Exhibit 1, page 3)
15. On ██████████ the Appellant's request for hearing was received by the Michigan Administrative Hearing System. (Exhibit 1, pages 3-14)

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.

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) 115, 11-1-11, addresses the DHS-54A Medical Needs form:

MEDICAL NEEDS FORM (DHS-54A)

The DHS-54A, Medical Needs form must be signed and dated by a medical professional certifying a medical need for personal care services. The medical professional must be an enrolled Medicaid provider and hold one of the following professional licenses:

- Physician (M.D. or D.O.).
- Nurse practitioner.
- Occupational therapist.
- Physical therapist.

Note: A physician assistant (PA) is not an enrolled Medicaid provider and **cannot** sign the DHS-54A.

The medical needs form is only required at the initial opening for SSI recipients and disabled adult children (DAC). All other Medicaid recipients must have a DHS-54A completed at the initial opening and annually thereafter.

The client is responsible for obtaining the medical certification of need but the medical professional and not the client must complete the form. The National Provider Identifier (NPI) number must be entered on the form by the medical provider and the medical professional must indicate whether they are a Medicaid enrolled provider.

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.** Needed services are determined by the comprehensive assessment conducted by the adult services specialist.

*Adult Services Manual (ASM) 115,
11-1-2011, Pages 1-2 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.

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 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.**

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.

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 If the cost of care decreases below the approved amount set by MDCH.

Adult Services Manual (ASM) 120, 5-1-2012,
Pages 1-5 of 5
(Underline added by ALJ)

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).

██████████
Docket No. 2012-66453 HHS
Decision and Order

- 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.*

On ██████████, the ASW wrote a request for an increase in the Appellant's EHHS authorization to MDCH noting that the Appellant's parents would be unavailable to provide care from ██████████ and while the Appellant is trying to make arrangements for another family member or friend to assist him for at least part of the time, if this is not possible he will need to rely on the agency during this time period. A contract and estimates for the agency services, an ██████████ DHS-54A Medical Need form, and the ██████████ DHS-324 Adult Services Comprehensive Assessment Form were attached. (Exhibit 3, pages 2-13) However, the Appellant's EHHS case had not had a review by MDCH for many years, and there was no MDCH authorization for the current EHHS total monthly care cost amount. (MDCH RN Testimony; ASW Testimony) It appears that a previously authorized amount of EHHS hours was continued and the total monthly care cost increased with the changes in the HHS provider rates without MDCH review. (ASW Testimony) Accordingly, the MDCH RN completed review of the Appellant's EHHS case in addition to reviewing the limited time authorization for the agency to provide care for the Appellant while his parents were on vacation. (MDCH RN Testimony) While this ALJ understands the Appellant was not expecting a complete review when this process began, a full review was appropriate because there was no MDCH authorization for the total monthly care cost of EHHS he was receiving.

The ASW's proposed time and task authorization for the Appellant had an EHHS total monthly care cost of ██████████. This monthly authorization for the Appellant's mother included ██████ hours and █████ minutes hours of services with a care cost ██████████. This monthly authorization for the agency provider included █████ hours and █████ minutes of services with a care cost of ██████████. The services included in this EHHS authorization were bathing, grooming, dressing, transferring, eating, medication, housework, laundry, shopping, meal preparation, specialized skin care, range of motion exercises, bowel program, and toileting. (Exhibit 3, pages 12-13)

██████████
Docket No. 2012-66453 HHS
Decision and Order

The MDCH RN had a telephone conference call with the Appellant and his parents. (MDCH RN Testimony) Additionally, on ██████████ the Appellant submitted responses to a Questionnaire from the MDCH RN to the ASW. (Exhibit 1, pages 13-14) Accordingly, the Appellant and his parents had additional opportunities to provide information about the Appellant's care needs to the Department after the ASW's assessment when it was clear a full review of the Appellant's case being completed. However, it is noted that the evidence submitted at this hearing does not establish that the time study the Appellant provided at the hearing was made available to the Department while the MDCH review of his EHHS case was being completed. (Exhibit A)

The MDCH review resulted in a reduced EHHS authorization with a total monthly care cost of ██████████. This authorization included ██████ hours and █████ minutes of services from the Appellant's mother with a monthly care cost of ██████████ and █████ hours and █████ minutes of services from the agency provider with a monthly care cost ██████████. The services included in this EHHS authorization were bathing, grooming, dressing, transferring, eating, medication, housework, laundry, shopping, meal preparation, specialized skin care, range of motion exercises, wound care, catheters or leg bags, and bowel program. (Exhibit 1, pages 25-26) It is also noted that the Department appropriately adjusted the hourly rate for the agency provider to the current county HHS provider rate for agency providers. (See *Adult Services Manual (ASM) 138, 11-1-2011, Page 2 of 3*)

The Appellant disagrees with the overall reduction to his EHHS authorization. (Exhibit 1, pages 3-14) However, some of the issues raised by the Appellant are beyond the scope of this hearing. For example, the issues relating to trying start services through the waiver program are beyond the action that the Department took on the EHHS case. There are also some concerns with the testimony of the RN that appeared as a witness for the Appellant. In part, the RN provided testimony about the need for a nurse to assist the Appellant, the minimum time the agency she is involved with would send a nurse to a client's home, and the times she expected it would take to provide assistance with some ADLs. (RN Testimony) As outlined in the above policy, the HHS program is limited and does not include nursing care. Accordingly, any medically necessary needs the Appellant may have for a nurse to provide care could not be met through the HHS program. Further, HHS program authorizations are based on the times necessary to provide hands on care with specific activities. This ALJ cannot consider the minimum time per visit an agency would be willing to send a caregiver to the Appellant's home. Lastly, some of the times this RN estimated it would take to assist the Appellant with some ADLs were excessive, even when compared to the actual times documented in the time study submitted by the Appellant. (Exhibit A, page 1)

The MDCH RN made many changes to the specific times and tasks in the Appellant's EHHS authorization:

Bathing

The MDCH RN testified there was no change to the hours authorized for bathing. (MDCH RN Testimony) However, a comparison of the time and task authorizations shows that the HHS hours for bathing remained with the Appellant's mother but were reduced from █ minutes █ days per week (█ hours and █ minutes per month) to 1 █ minutes █ days per week (█ hours and █ minutes per month). (Exhibit 1, pages 25-26; Exhibit █, pages 12-13) The chart the MDCH RN utilizes in reviewing EHHS requests indicates the ASW's request for bathing at █ hours and █ minutes per month with no bolding of the time, specific notes about bathing, or any other indication she determined these hours should be reduced. (Exhibit 1, pages 27-29) No specific information about bathing was provided by the ASW on the assessment form nor does it appear that the MDCH RN requested any information from the Appellant about bathing in the questionnaire. (Exhibit 1, pages 13-14; Exhibit 3, pages 7-11) Accordingly, there is insufficient evidence to support the reduction to the bathing authorization.

The information in the time study submitted at the hearing proceedings indicates that bathing actually takes █ hours. (Exhibit A, page 1) However, it is not clear that the time study was provided to the Department when the EHHS case was being reviewed or that the Appellant let the Department know any additional hours were needed for bathing during that time.

Grooming, Dressing, Medications and Specialized Skin Care

A comparison of the time and task authorizations shows that the hours for grooming, dressing, medications and specialized skin care were not changed. (Exhibit 1, pages 25-26; Exhibit 3, pages 12-13) Again the information in the Appellant's time study indicates it actually takes some additional time to complete these activities, but it is not clear that the time study was provided to the Department when the EHHS case was being reviewed or that the Appellant let the Department know any additional hours were needed for these activities during that time. Accordingly, the determination to authorize the same hours for grooming, dressing, medications and specialized skin care appears to be appropriate based on the information available to the Department at that time.

Eating

The ASW's time and task authorization included the Appellant's mother assisting with eating █ minutes █ days per week (█ hours and █ minutes per month) and the agency providing eating assistance █ hour █ days per week (█ hours and █ minutes per month). (Exhibit 3, pages 12-13)

The MDCH RN reduced the overall eating authorization. The Appellant's mother was authorized █ minutes █ days per week (█ hours and █ minutes per month) and the agency was authorized █ minutes █ days per week (█ hours and █ minutes per month). (Exhibit 1, pages 25-26)

In response to the questionnaire, the Appellant described the assistance he needs with eating but was not very specific about how many meals per day he eats nor how long it take for each meal. The Appellant indicated he requires assistance with all aspects of eating except chewing and swallowing, but only listed an approximate feeding time of █ minutes with no indication of whether this time was per meal or per day. (Exhibit 1, pages 13-14) The MDCH RN testified she authorized █ minutes per meal and considered that █ days per week the Appellant's mother provides eating assistance with all meals. (MDCH RN Testimony) However, the authorization for the Appellant's mother for eating assistance is a bit lower than described in the MDCH RN's testimony. Based on the RN's testimony, the intended weekly authorization for eating for the Appellant's mother would include █ minutes █ days per week for █ meals daily plus another █ minutes for █ lunches on the days the agency is not there. As authorized, only an extra █ minutes per day, or █ minutes per week, were added for the █ lunches on the days the agency is not there. (Exhibit 1, pages 25-26)

Toileting, Catheterization, and Bowel Program

The ASW's time and task authorization included the Appellant's mother assisting with a bowel program █ hour █ days per week (█ hours and █ minutes per month) and the agency providing toileting assistance █ hour and █ minute █ days per week (█ hours and █ minutes per month). (Exhibit 3, pages 12-13) The previously authorized total of about █ hours per month, with his mother only assisting with bowel program, was not consistent with the care the Appellant was receiving. It was not contested that the Appellant's mother had been providing most of the catheterization assistance.

The MDCH RN eliminated the task of toileting and instead added the complex care activity of catheters or leg bags. The MDCH RN authorized catheterization assistance from the Appellant's mother of █ minutes █ days per week (█ hours and █ minutes per month) and from the agency of 10 minutes █ days per week (█ hours and █ minutes per month). The MDCH RN authorized bowel program assistance from the Appellant's mother of █ minutes █ days per week (█ hours and █ minutes per month). (Exhibit 1, pages 25-26) Authorizing the hours under the complex care activity of catheters or leg bags instead of toileting and adjusting the days per week to allow for daily catheterization assistance was appropriate and is a more accurate reflection of the Appellant's actual care needs.

In response to the questionnaire, the Appellant indicated he is on an every other day bowel program, a suppository is inserted, he is put in a commode chair to wait for the bowels to be evacuated, and the time varies from █ minutes to █ hour. At times the Appellant may not have a bowel movement, so he is showered and placed in bed and there may be clean up of an overnight bowel movement or at least the suppository residue later. (Exhibit 1, pages 13-14) As the MDCH RN explained, the bowel program assistance would not compensate a caregiver for time spent waiting for a suppository to work, only the insertion of the suppository, clean up, and other hands on portions of this activity. (MDCH RN Testimony) The bowel program authorization of █ minutes █ days per week is consistent with the information available to the RN about the hands on care provided for this activity.

Regarding the catheterization hours, the MDCH RN's authorization was consistent with the low end estimates the Appellant provided in response to the questionnaire about day time catheterization using clean technique and the overnight Foley catheter with collection bag. (Exhibit 1, pages 13-14 and 25-26) However, it is noted that the agency assistance is only █ days per week. The MDCH RN's testimony was not clear that the authorization for the Appellant's mother included the time for the additional catheterization assistance she provides on the two days the agency is not providing any care for the Appellant.

Transferring

A comparison of the time and task authorizations shows that the hours for transferring assistance were significantly increased. The Appellant's mother had been authorized █ minutes █ days per week (█ hours and █ minute per month) for transferring assistance. (Exhibit 3, page 12) The MDCH RN authorized █ minutes █ days per week █ hours and █ minutes per month) for transferring assistance from the Appellant's mother. (Exhibit 1, page 25) It appears that this increase was based on MDCH RN's understanding the Appellant had a ceiling lift. (Exhibit 1 pages 27-29)

The time study submitted at the hearing indicates it takes █ hours for transferring daily, but it is not clear that the time study was provided to the Department when the EHHS case was being reviewed or that the Appellant let the Department know any additional hours were needed for transferring during that time. (Exhibit A, page 1)

Range of Motion Exercises

The ASW's time and task authorization included the Appellant's mother assisting with range of motion exercises █ hour and █ minutes █ days per week █ hours and █ minutes per month). (Exhibit 3, pages 12-13) The MDCH RN reduced the range of motion authorization for the Appellant's mother to █ hour █ days per week (█ hours and █ minutes per month). (Exhibit 1, pages 25-26) This reduction was consistent with the information the Appellant provided in response to the questionnaire. (Exhibit 1, page 14)

Wound Care

The MDCH RN added this complex care task to the Appellant's EHHS authorization allowing █ minutes █ days per week (█ hours and █ minutes per month) for the Appellant's mother to provide this assistance. The addition of wound care hours was consistent with the information the Appellant provided about wound care in his response to the questionnaire. (Exhibit 1, page 14)

Housework, Shopping, Laundry and Meal Preparation

The policy implemented by the Department recognizes that in most cases these; 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, the policy allows for exceptions when there is clear documentation to justify performing an activity separately, such as incontinence.

The Department policy allows for a maximum of █ hours per month for housework, █ hours per month for shopping, █ hours per month for laundry and █ hours per month for meal preparation. The Department properly considered proration of these activities because the Appellant lives with his parents. (Exhibit 3, page 2) The MDCH RN authorized █ hours and █ minute per month for housework, █ hours per month for laundry, █ hours and █ minutes per month for shopping, and █ hours and █ minutes per month for meal preparation for the Appellant's mother as well as █ hours and █ minutes per month for the agency to provide meal preparation █ days per week. (Exhibit 1, pages 25-26) These authorizations exempted laundry from proration, allowed half the monthly maximums for housework and shopping, and a bit more the half the maximum for meal preparation since the agency provides the Appellant's meal preparation for lunch █ days per week. These authorizations were appropriate for the Appellant's household composition and needs for assistance with these activities.

Summary

Overall, the evidence supported many of the adjustments to the Appellant's EHHS hours, but there did appear to be a few errors with just a few activities. However, the MDCH RN testified it did not matter if the Appellant's mother or the agency provided the care.

The Department's policy sets the HHS county rates for individual providers and agency providers. In █ County, the individual HHS provider rate is █ and the HHS agency provider rate is █. (Adult Services Manual (ASM) 138, 11-1-2011, Page 2 of 3) The current MDCH authorization of the EHHS total monthly care cost only allowed for the agency to provide a very limited amount of the Appellant's care and most of the hours were authorized with the Appellant's mother providing the assistance at the lower individual HHS provider rate. (Exhibit 1, pages 25-26) Because the policy requires another MDCH authorization for any additional increases in the total monthly care cost of an EHHS case, it is not clear that the ASW could have allowed for more of the care to be provided by the agency without another MDCH authorization. (See Adult Services Manual (ASM) 120, 5-1-2012, Page 5 of 5) Rather, if it does not matter to MDCH which enrolled provider actually provides the Appellant's care, the MDCH authorization should have allowed most, if not all, of the hours under the agency provider at the higher rate. The policy does specifically allow the ASW to authorize a lesser monthly care cost than the MDCH authorization. (See Adult Services Manual (ASM) 120, 5-1-2012, Page 5 of 5) The ASW could then adjust the time and tasks authorizations as appropriate for care provided by the individual provider, the Appellant's mother, decreasing the total monthly EHHS care cost without the need for additional MDCH review. Accordingly, the Department's overall determination in this case cannot be upheld.

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 Appellant's EHHS case based on the available information.

IT IS THEREFORE ORDERED THAT:

The Department's decision is REVERSED. The Department must initiate re-assessment the Appellant's EHHS case.

/s/

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

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

CL/db

cc: [REDACTED]

***** 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.