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:

Docket No. 2013-10417 HHS

[redacted] [redacted] [redacted]

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 [redacted]. [redacted], the Appellant, appeared on his own behalf. [redacted], caregiver's daughter, [redacted] caregiver, [redacted], caregiver's grandson, [redacted], caregiver's daughter, [redacted], caregiver's brother, [redacted], Appellant's brother, [redacted] caregiver's daughter, [redacted], caregiver's daughter in law, and, [redacted] caregiver's son, appeared as witness for the Appellant. [redacted] Appeals Review Officer, represented the Department. Vicki Woodcock, Adult Services Worker ("ASW"), [redacted], APS Worker, [redacted], Adult Services Supervisor, and [redacted] RN Michigan Department of Community Health ("MDCH") Home Help Services Program, appeared as witnesses for the Department.

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 EHHS.

2. The Appellant has multiple diagnoses, including: C3/C4 complete spinal cord injury, quadriplegia, decubitus ulcers, allergies, acute bladder infection, psoriasis, and gingivitis. (Exhibit 1, pages 8-10 ; Exhibit 2, page 2; Exhibit A, pages 6-7, 15, 25, 31 and 53)

3. The Appellant lives with his caregiver, the enrolled HHS provider. (Exhibit 1, pages 11 and 32-35, Exhibit 2 pages 1-2; Exhibit A, pages 3-5, 14-15, 20-30, 38-39 and 51-58)

4. Home Help Services payments of [redacted] per month or greater are considered EHHS. EHHS payments over [redacted] per month require approval from the MDCH. (Adult Services Manual (ASM) 140 11-1-2011 page 2)

5. The Appellant was receiving EHHS with a total monthly care cost of [redacted] The services included in this EHHS authorization were bathing, grooming, dressing, transferring, mobility, medication, housework, laundry, shopping, meal preparation, catheters or leg bags, range of motion exercises, eating, specialized skin care and bowel program totaling [redacted] hours and [redacted] minutes per month. (Exhibit 1, page 33)

6. On [redacted], Adult Services Comprehensive Assessment Form (DHS-324) and ILS/ACP Service Plan (DHS-324-A) forms were completed. (Exhibit A, pages 51-58)

7. On [redacted], the ASW sent the Appellant a letter requesting additional information that would be needed for a reassessment. (Exhibit A, page 13)

8. On [redacted], the ASW requested approval from MDCH to increase in the Appellant's EHHS authorization to [redacted] hours and [redacted] minutes with a total monthly care cost of [redacted] (Exhibit 1, page 34; Exhibit 2; Exhibit A, pages 14-19)

9. On [redacted], Adult Services Comprehensive Assessment Form (DHS-324) and ILS/ACP Service Plan (DHS-324-A) forms were completed. (Exhibit A, pages 23-30)

10. On [redacted], the Appellant and his caregiver completed a Redetermination form (DHS-1010), in part, stating that they do not buy food, fix, or eat meals together. (Exhibit A, pages 37-39)

11. On [redacted], the Department sent the Appellant an Advance Negative Action Notice, which informed him that effective [redacted] the EHHS authorization would be reduced to [redacted] per month. The services included in this EHHS authorization were bathing, grooming, dressing, transferring, eating, mobility, medication, housework, laundry, shopping, meal preparation, catheters or leg bags, bowel program, specialized skin care, range of motion exercises, and wound care totaling [redacted] hours and [redacted] minutes. (Exhibit 1, pages 6 and 35)

12. On [redacted], the Appellant's request for hearing was received by the Michigan Administrative Hearing System. (Exhibit 1, pages 4-6)

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) 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) 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.

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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 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, 5-1-2012,
Pages 1-4 of 5

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.

The Appellant was receiving EHHS with a total monthly care cost of [redacted]. The services included in this EHHS authorization were bathing, grooming, dressing, transferring, mobility, medication, housework, laundry, shopping, meal preparation, catheters or leg bags, range of motion exercises, eating, specialized skin care and bowel program totaling [redacted] hours and [redacted] minutes per month. (Exhibit 1, page 33)

On [redacted], the ASW requested approval from MDCH to increase in the Appellant's EHHS authorization to [redacted] hours and [redacted] minutes with a total monthly care cost of [redacted] (Exhibit 1, page 34; Exhibit 2; Exhibit A, pages 14-19)

The MDCH RN determined that the Appellant's the EHHS authorization should be reduced to [redacted] per month. The services included in this EHHS authorization were bathing, grooming, dressing, transferring, eating, mobility, medication, housework, laundry, shopping, meal preparation, catheters or leg bags, bowel program, specialized skin care, range of motion exercises, and wound care totaling [redacted] hours and [redacted] minutes. (Exhibit 1, pages 35)

The Appellant disagrees with the overall reduction to his EHHS authorization. (Appellant Testimony)

For only a few activities, including bathing, dressing, and medications, there does not appear to be any contested issue because the HHS authorization either remained the same or the requested increase was granted. (Exhibit 1, pages 33-35)

For other activities, including grooming, transferring and range of motion exercises, it is not clear why only part of the requested increase was granted. (Exhibit 1, pages 33-35; Exhibit 2) For example with grooming, the RN did not provide any explanation why only [redacted] minutes per day were authorized instead of the requested [redacted] minutes per day. It is noted that the ASW provided a detailed description of special needs with grooming tasks in addition to treatments for multiple skin conditions to support the requested [redacted] minutes per day. The addition of HHS hours for wound care was for pressure sore treatment, and did not include time for the skin treatments that were authorized under grooming. (Exhibit 1, pages 33-35; Exhibit 2, page 3; RN Testimony)

For some activities, such as eating and the bowel program, the ASW did not recommend any change, but the ASW reduced the HHS authorization. For example, regarding eating, the ASW did not recommend any change to the HHS authorization, but the RN determined there should be a decrease. (Exhibit 1, pages 33-35) The RN understood that the Appellant is dependent on the provider for this activity, and due to his choke risk is given small bites and frequent sips while feeding. The RN explained that she only allowed for the hands on time, so the authorization was reduced giving [redacted] minutes per meal and [redacted] minutes for snacks. (Exhibit 1, page 44, RN Testimony) The information provided by the ASW described why the Appellant must eat more slowly than most people and that multiple breaks may occur when the Appellant experiences dizziness due to blood pressure problems. The ASW indicated that it takes about an [redacted] and a [redacted] to feed the Appellant each time, but she was only recommending continuing the prior HHS authorization of [redacted] hours and [redacted] minutes per day. (Exhibit 2, page 4) Accordingly, it was not clear why the RN further reduced the HHS authorization when the ASW had already taken into account that not all of the time it takes to feed the Appellant is hands on time. Similarly, with the bowel program, the information provided by the ASW indicated the total process takes several hours, but the HHS authorization was only for the hands on care. The ASW's request also noted that the cleanup of fecal material may occur multiple times per day indicating time for this was authorized under the bowel program, which is understandable as there was no authorization of HHS hours under the general ADL of toileting. (Exhibit 2, page 4; Exhibit 1, pages 33-35)

Regarding mobility, the RN determined that the HHS authorization should be reduced further than the ASW's proposed reduction. (Exhibit1, pages 33-35) However, the functional ranking definition provides clarity for this determination. For the HHS program mobility is defined as "walking or moving around inside the living area changing locations in a room, assistance with stairs or maneuvering around pets or obstacles including uneven floors." Adult Services Manual (ASM) 121, 11-1-2011, Page 3 of 4. In the information sent to the RN for review, the ASW stated the provider places the Appellant's pinky around the control and the Appellant is able to maneuver the

wheelchair inside the home. The ASW only described further needs for assistance with mobility when going outside the home for fresh air and when going to appointments. (Exhibit 2, page 3) Under the Department's policy, these needs for mobility assistance outside the home would not be covered in the HHS program. Further, the appellant's testimony confirmed that his home was designed to allow for mostly independent mobility in the electric wheelchair, with some assistance placing/re-placing his hand in position to operate the control and opening/closing doors. (Appellant Testimony)

Regarding catheterization, the ASW recommended an increase but the RN determined the HHS hours should be reduced. (Exhibit 1, pages 33-35) The documentation provided by the ASW stated the Appellant is catheterized every [redacted] hours and the provider must maintain the bed bag overnight. (Exhibit 2, page 5) The RN's testimony indicated that she only allowed for intermittent catheterization every 3-4 hours during the day and only the hooking up at night and then unhooking and cleanup of the bed bag in the morning. (RN Testimony) The Appellant's caregiver of 35 years is also a nurse and explained the Appellant's history with catheterizations and different methods that have been tried and history of infections with other methods, the involvement of the urologist in determining what method works for the Appellant and the adjustments that are made overnight with the current method. (Caregiver Testimony) Further, [redacted] letter from the Appellant's primary doctor was provided indicating that the clean technique intermittent catheterization method is more work, but has a lower rate of infection. (Exhibit A, page 6) Even if it is not a typical method for an overnight bed bag, the RN should consider what method has been shown to work best for the Appellant in determining his HHS authorization for catheterization. Particularly when there has been involvement of his primary doctor, an urologist, and a nurse caregiver to determine what method works best for the Appellant.

Regarding specialized skin care, the ASW recommended a slight increase from [redacted] minutes per day to one hour per day, but the RN determined the HHS authorization for this activity should be reduced to [redacted] minutes per day. (Exhibit 1, pages 33-35) The RN explained that specialized skin care hours were authorized for repositioning when the Appellant is in bed and cannot move or turn on his own. The RN explained that during the day, the Appellant would be more active and repositioning every [redacted] hours would not be needed when other activities such as catheterization, range of motion exercise grooming, and bathing are being completed. (RN Testimony) While it is understandable that another repositioning effort would not be needed if repositioning occurs during these activities, it is not clear from the information the ASW provided to the RN that this always occurs in the Appellant's case. Rather, the information provided by the ASW indicated that repositioning is needed during the day and the Appellant is only transferred [redacted] per day, one from bed into the wheelchair and once back to bed from the wheelchair. While it is likely that range of motion exercises will involve repositioning as they are completed, the evidence is not sufficient to establish that the completion of ADLs like catheterization, bathing, and grooming also result in repositioning and/or are competed during the time the Appellant is in his wheelchair for the day. The information indicates the Appellant has a bed bath each morning, which

presumably occurs prior to getting in the wheelchair for the day. Therefore, the bathing and subsequent transfer into the wheelchair would involve repositioning at the time they are completed, but would not negate the need for further repositioning during the time the Appellant is up in his wheelchair for the day. Similarly, if the grooming activities are completed in the morning before the transfer into the wheelchair and in the evening after the transfer back into bed, they would not negate the need for daytime repositioning. Additionally, it was not clear from the information provided that the daytime intermittent catheterization involves repositioning. (Exhibit 2)

Regarding the IADLs 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 or a special diet.

The Department policy allows for a maximum of [redacted] hours per month for housework, [redacted] hours per month for shopping, [redacted] hours per month for laundry and [redacted] hours per month for meal preparation. In the previous authorization the HHS hours had not been prorated for any of these activities. (Exhibit 1, page 33) The Department properly considered proration of these activities because the Appellant lives with his provider. (Exhibit 2, page 1) Only the HHS hours for laundry remained exempted by the RN. (Exhibit 1, pages 33-35) However, the evidence shows the Appellant has many food allergies resulting in a specialized diet. Additionally, the evidence indicates that the Appellant receives food stamps and has certified to the Department for redetermination that he and his caregiver buy food, fix and eat meals separately. (Exhibit 2, pages 4-5; Exhibit A pages 3-4 and 37-39; Caregiver and Caregiver's Daughter Testimony) Accordingly, there is evidence to support exempting shopping and meal preparation from proration.

The Appellant presented sufficient evidence to show that the overall reduction the Department made to his monthly HHS authorization was improper. Accordingly, the Department's determination must be reversed and the Appellant's HHS case must be reassessed.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED THAT:

The Department's decision is REVERSED. The Appellant's HHS case shall be reinstated at the previously authorized monthly care cost of [redacted] retroactive to the [redacted] effective date and the Department must re-assess the Appellant's HHS 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.