# STATE OF MICHIGAN MICHIGAN ADMINISTRATIVE HEARING SYSTEM FOR THE DEPARTMENT OF COMMUNITY HEALTH

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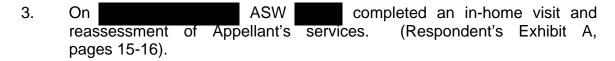
IN THE MATTER OF:

	Docket No. Case No.	2013-14126 HHS
Appellant.		
DECISION AND ORDER		
This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 <i>et seq.</i> , and upon the Appellant's request for a hearing.		
After due notice, a hearing was held on at a papeared a	o testified o	rtment of Community
ISSUE		
Did the Department properly determine that (HHS) should be reduced?	t Appellant's	Home Help Services
FINDINGS OF FACT		
The Administrative Law Judge, based upon the co	ompetent, ma	terial and substantial

1. Appellant is a pyear-old Medicaid beneficiary who has been diagnosed with schizoaffective disorder, chronic pain, Marfan syndrome, anxiety, migraines, seizure disorder, and asthma. (Respondent's Exhibit A, page 10).

evidence on the whole record, finds as material fact:

2. Appellant has been receiving HHS in the amount of 108 hours and 21 minutes per month, with a total care cost of authorized for assistance with bathing, grooming, dressing, eating, toileting, transferring, mobility, housework, laundry, shopping, meal preparation, and taking medications. (Respondent's Exhibit A, page 18).



- 4. Following that home visit, ASW decided to terminate the assistance authorized for eating; increase the assistance authorized for taking medications; and reduce the assistance authorized for laundry, meal preparation, and mobility. The assistance authorized for all other tasks would remain the same. (Respondent's Exhibit A, pages 18-19; Testimony of ASW ).
- 5. Overall, Appellant's HHS were to be reduced to 85 hours and 12 minutes per month, with a care cost of per month. (Respondent's Exhibit A, page 19).
- 6. On the Department sent a written notice notifying Appellant that her HHS would be reduced on (Respondent's Exhibit A, pages 11-14).
- 7. On the Michigan Administrative Hearing System (MAHS) received a request for hearing filed on behalf of Appellant. (Respondent's Exhibit A, page 5).
- 8. The proposed reduction has not yet been implemented and Appellant's HHS have remained in place at the higher amount while this appeal has been pending. (Testimony of Appellant's representative; Testimony of ASW (Inc.).

## **CONCLUSIONS OF LAW**

The Medical Assistance Program is established pursuant to Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). It is administered in accordance with state statute, the Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

Home Help Services are provided to enable functionally limited individuals to live independently and receive care in the least restrictive, preferred settings. These activities must be certified by a physician and may be provided by individuals or by private or public agencies.

Adult Services Manual 101 (11-1-2011) (hereinafter "ASM 101") and Adult Services Manual 120 (5-1-2012) (hereinafter "ASM 120") address the issues of what services are included in Home Help Services and how such services are assessed. In part, ASM 101 provides:

## **Home Help Payment Services**

Home Help Services are non-specialized personal care service activities provided under the independent living services program to persons who meet eligibility requirements.

Home Help Services are provided to enable individuals with functional limitation(s), resulting from a medical or physical disability or cognitive impairment to live independently and receive care in the least restrictive, preferred settings.

Home Help Services are defined as those tasks which the department is paying for through Title XIX (Medicaid) funds. These services are furnished to individuals who are **not** currently residing in a hospital, nursing facility, licensed foster care home/home for the aged, Intermediate Care Facility (ICF) for persons with developmental disabilities or institution for mental illness.

These activities must be certified by a Medicaid enrolled medical professional and may be provided by individuals or by private or public agencies. 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.

Personal care services which are eligible for Title XIX funding are limited to:

Activities of Daily Living (ADL)

- Eating.
- Toileting.
- Bathing.
- Grooming.
- Dressing.
- Transferring.
- Mobility.

Instrumental Activities of Daily Living (IADL)

- Taking medication.
- Meal preparation/cleanup.

- Shopping for food and other necessities of daily living.
- Laundry.
- Housework.

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. [ASM 101, pages 1-2 of 4.]

Moreover, ASM 120 states:

### **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.
- Verbal Assistance: Performs the activity with verbal assistance such as reminding, guiding or encouraging.
- 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 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.

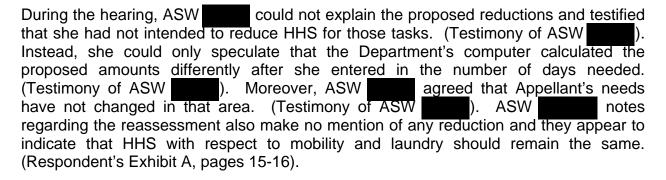
**Example**: Ms. Smith is assessed at a level 4 for bathing however she refuses to receive assistance. Ms. Smith would be eligible to receive assistance with IADL's if the assessment determines a need at a level 3 or greater.

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. [ASM 120, pages 2-3 of 5.]

## **Mobility and Laundry**

As discussed above, the Department plans to make small reductions to the assistance authorized for the tasks of mobility and laundry. Specifically, assistance with mobility is to be reduced from 16 minutes a day, 7 days a week to 14 minutes a day, 7 days a week, while assistance with laundry is to be reduced from 49 minutes a day, 2 days a week to 45 minutes a day, 2 days a week. (Respondent's Exhibit A, pages 18-19).

According to both Appellant's representative and care giver, Appellant's needs for assistance with those two tasks have not changed and Appellant requires the same amount of assistance as before. (Testimony of Appellant's representative; Testimony of Description).

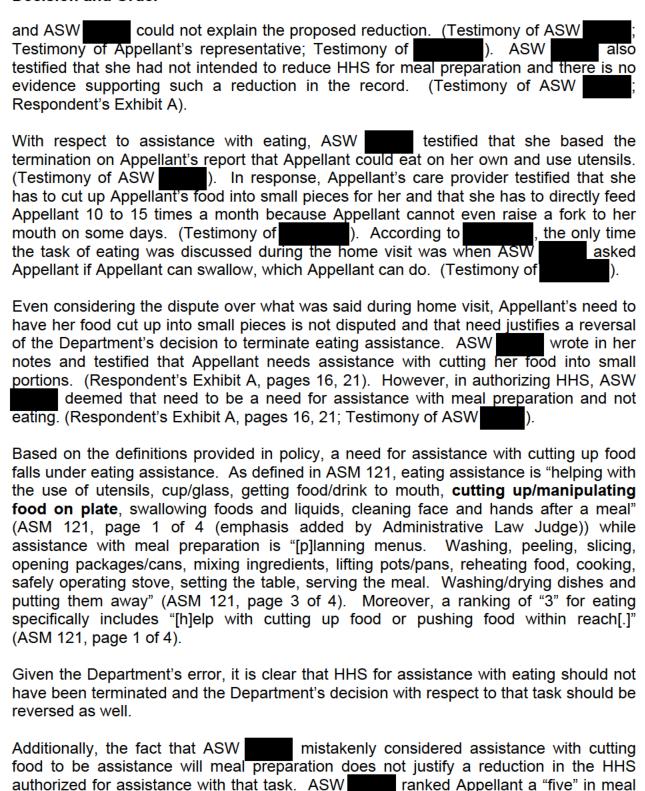


Given ASW testimony that she did not specifically intend to reduce HHS for those two tasks, in addition to the complete lack of any evidence suggesting that such a reduction would be proper, this Administrative Law Judge finds that the Department erred in deciding to reduce Appellant's HHS with respect to mobility and laundry.

## **Meal Preparation and Eating**

The Department also plans to reduce the assistance authorized for the task of meal preparation and terminate the assistance previously authorized for the task of eating. Specifically, assistance with meal preparation is to be reduced from 50 minutes a day, 7 days a week to 49 minutes a day, 7 days a week. (Respondent's Exhibit A, pages 18-19). Appellant is currently receiving 44 minutes per day, 7 days a week of assistance of HHS for assistance with eating. (Respondent's Exhibit A, page 18).

As with the tasks of mobility and laundry, the small reduction in assistance with meal preparation is a mistake. ASW Appellant's representative and Appellant's care giver all testified that Appellant's needs for assistance with that task have not changed



preparation (Respondent's Exhibit A, page 21), which means she is "Totally dependent

also testified

on another for meal preparation." (ASM 121, page 3 of 4). ASW

that she always intended to authorize the maximum amount of assistance that can be authorized for assistance with meal preparation, *i.e.* 25 hours a month. (ASM 120, page 4 of 5). Given her ranking, as well as the testimony of ASW Appellant would still be totally dependent in meal preparation and should still receive the maximum amount of assistance that could be authorized for that task even if cutting up food was considered to be assistance with eating.

## **DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department erred in deciding to reduce Appellant's Home Help Services.

#### IT IS THEREFORE ORDERED THAT:

The Department's decision is **REVERSED**. Appellant's HHS shall remain at the previously authorized total of 108 hours and 21 minutes per month, with a total monthly care cost of

Steven J. Kibit
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

cc:

Date Mailed: April 16, 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 filling 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.