

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

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IN THE MATTER OF:

██████████

Appellant

Docket No. 2013-23481 HHS
Case No. ██████████

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.*, upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████ ██████████ the Appellant, appeared on his own behalf. ██████████ Appeals Review Officer, represented the Department. ██████████, Adult Services Worker ("ASW"), and ██████████ Adult Services Supervisor, appeared as witnesses for the Department.

ISSUE

Did the Department properly assess the Appellant's Home Help Services ("HHS") 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. On or about ██████████ the Appellant applied for the HHS program. (Exhibit 1, page 6)
2. On ██████████ and ██████████ the Appellant's physician completed DHS-54A Medical Needs forms certifying that the Appellant had a medical need for assistance with personal care activities and documented diagnoses of atrial fibrillation, coronary artery disease, congestive heart failure, and chronic renal failure. The Appellant has reported additional diagnoses of diabetes, high cholesterol, hypertension, broken hip on ██████████ and blindness due to complications from cataract surgery. (Exhibit 1, pages 12 and 17-18)
3. On ██████████, the ASW went to the Appellant's home and completed an in-home assessment for a review of the Appellant's HHS case. The ASW went over each of the ADLs and IADLs included in the HHS program with the Appellant. The Appellant reported needs for

assistance with bathing, grooming, dressing, toileting, transferring, eating, mobility, medication, housework, shopping, laundry and meal preparation. The ASW noted the proposed provider would need to make an appointment to come into the office. (Exhibit 1, page 10)

4. On [REDACTED] the office contact with the Appellant's HHS provider was completed. (Exhibit 1, page 10)
5. The ASW determined that the Appellant ranked at: functional level 3 for bathing, grooming, dressing, toileting, transferring, eating and mobility; functional level 4 for housework, shopping, laundry and meal preparation; and functional level 5 for medication. The ASW authorized a total of 56 hours and 15 minutes per month of HHS for assistance with these activities. (Exhibit 1, pages 13-16)
6. On [REDACTED] the Department sent the Appellant a Services and Payment Approval Notice which informed him that he was approved for HHS with a monthly care cost of [REDACTED] with a start date of [REDACTED]. (Exhibit 1, pages 6-8)
7. On [REDACTED] the Appellant's request for hearing was received by the Michigan Administrative Hearing System. (Exhibit 1 page 4)

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: [REDACTED] is assessed at a level 4 for bathing however she refuses to receive assistance. [REDACTED] 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) 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) 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: [REDACTED] is assessed at a level 4 for bathing however she refuses to receive assistance. [REDACTED] 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

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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.

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- 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.

On [REDACTED] the ASW went to the Appellant's home and completed an in-home assessment for a review of the Appellant's HHS case. The ASW went over each of the ADLs and IADLs included in the HHS program with the Appellant. The Appellant reported needs for assistance with bathing, grooming, dressing, toileting, transferring, eating, mobility, medication, housework, shopping, laundry and meal preparation. The ASW noted the proposed provider would need to make an appointment to come into the office. (Exhibit 1, page 10) On [REDACTED], the office contact with the Appellant's HHS provider was completed. (Exhibit 1, page 10)

The ASW determined that the Appellant ranked at: functional level 3 for bathing, grooming, dressing, toileting, transferring, eating and mobility; functional level 4 for housework, shopping, laundry and meal preparation; and functional level 5 for medication. The ASW authorized a total of 56 hours and 15 minutes per month of HHS for assistance with these activities with a total monthly care cost of \$450.07. (Exhibit 1, pages 13-16)

The Appellant disagrees with the amount of HHS hours authorized because he needs more time for someone to help him with his daily needs. (Exhibit 1, page 4; Appellant Testimony)

Bathing

The ASW ranked the Appellant as a level 3 noting he needed assistance getting in/out and washing his back due to shaking, pain, limited movement and blindness. (Exhibit 1, page 13) The ASW understood that the Appellant bathes every other day and authorized 16 minutes 4 days per week (4 hours and 35 minutes per month) of HHS for

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bathing. (Exhibit 1, page 16; ASW Testimony)

The Appellant testified that with bathing he needs assistance getting undressed, getting in the tub, washing, drying, and re-dressing. (Appellant Testimony)

There was no evidence indicating bathing assistance was provided more frequently than 4 days per week. The functional ranking at level 3 for bathing is consistent with the ASW understanding the bathing assistance was limited to help getting in/out and with washing only his back. (See Adult Services Manual (ASM) 121, 11-1-201, pages 1-2) However, the Appellant's testimony indicates that he needs additional assistance with washing his body as well as drying. This would be consistent with the limitations noted by the ASW for bathing and many other ADLs due to pain, shaking, limited movement and blindness. The evidence indicates that the Appellant needs hands on assistance with most aspects of bathing, rather than just minimal hands on assistance. The Appellant's functional ranking for bathing should be increased to a level 4 and the HHS hours for this activity should be increased accordingly.

Grooming

The ASW ranked the Appellant as a level 3 noting he needed assistance with his hair, shaving nails, etc. due to shaking, pain, limited movement and blindness. (Exhibit 1, page 13) The ASW understood that the grooming is also completed every other day and authorized 8 minutes 4 days per week (2 hours and 18 minutes per month) of HHS for grooming. (Exhibit 1, page 16; ASW Testimony) The ASW did not know what type of razor the Appellant used for shaving and testified that of all the tasks included in grooming, he believed the Appellant could brush his own teeth and wash his own hands. (ASW Testimony)

The Appellant testified that he can place his dentures in a cup. The Appellant can not cut his nails on either hand, and would cut himself shaving with the straight razor. An electric razor had only been purchased just prior to the [REDACTED] hearing date. Further, the Appellant explained that he has dialysis three days per week, which makes him very weak. (Appellant Testimony)

There was no evidence indicating grooming assistance was provided more frequently than 4 days per week. However, the functional ranking at level 3 for grooming was not consistent with the ASW understanding that assistance was provided with most grooming tasks. Further, specifically regarding shaving, the evidence indicates the Appellant would be at risk if left alone. (See Adult Services Manual (ASM) 121, 11-1-201, page 2) The evidence was sufficient to support a determination that the Appellant needs hands on assistance with most aspects of grooming, rather than just minimal hands on assistance. The Appellant's functional ranking for grooming should be increased to a level 4 and the HHS hours for this activity should be increased accordingly.

Dressing

The ASW ranked the Appellant as a level 3 noting he needed assistance with selection

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and sometimes putting clothes on due to shaking, pain, limited movement and blindness. (Exhibit 1, page 13) The ASW authorized 14 minutes 7 days per week (7 hours and 1 minute per month) of HHS for dressing. (Exhibit 1, page 16; ASW Testimony)

The Appellant testified that he broke his hip in [REDACTED] and can not bend down to put on some items, such as pants and socks. In subsequent testimony regarding toileting, the Appellant testified that in [REDACTED] he was able to pull his pants up/down. (Appellant Testimony)

The evidence was consistent with the functional ranking determination at level 3, minimal hands on assistance, for dressing. (See Adult Services Manual (ASM) 121, 11-1-201, page 2) The evidence indicates that at the time of the initial assessment the Appellant may have needed assistance with socks, shoes and getting pants around his feet and lower legs, but could then pull them the rest of the way up/down himself. The HHS authorization for dressing is consistent with the functional ranking at level 3 and is upheld.

Toileting

The ASW ranked the Appellant as a level 3 noting he needed assistance with getting in/out and with clean up due to shaking, pain, limited movement and blindness. (Exhibit 1, page 13) The ASW understood that the Appellant was not incontinent. The ASW authorized 11 minutes 7 days per week (5 hours and 31 minutes per month) of HHS for toileting. (Exhibit 1, page 16; ASW Testimony)

The Appellant testified that he needs help to get into the bathroom and has a commode, which he can not empty himself. The Appellant was able to raise/lower his pants at the time of the [REDACTED] assessment but now his arms are weak and he can not do this all the time. In [REDACTED] the Appellant could also complete wiping and cleaning himself. Subsequent testimony regarding transferring indicated the Appellant could use his walker to get up from seated positions. (Appellant Testimony)

The evidence was consistent with the functional ranking determination at level 3, minimal hands on assistance, for toileting at the time of the initial assessment. (See Adult Services Manual (ASM) 121, 11-1-201, page 1) The testimony indicates the Appellant may have needed assistance with getting into/out of the bathroom, but this would be considered under mobility. The Appellant's testimony indicated he could manage his clothing and complete wiping/cleaning on his own as well as get up with the use of his walker at the time of the initial assessment. The Appellant would have needed hands on assistance with emptying his commode. The HHS authorization for toileting is consistent with the functional ranking at level 3 and is upheld.

Transferring

The ASW ranked the Appellant as a level 3 noting he needed a boost or pull due to shaking, pain, limited movement and blindness. (Exhibit 1, page 13) The ASW understood that the Appellant frequently needed a boost or pull to get up from a sitting

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or laying position. The ASW authorized 6 minutes 7 days per week (3 hours and 1 minute per month) of HHS for transferring. (Exhibit 1, page 16; ASW Testimony)

The Appellant testified that he had to use his walker, placed in front of him, to get up from chairs. For example, the Appellant would take his walker with him to the bathroom to get back up from the toilet. (Appellant Testimony)

The evidence was consistent with the functional ranking determination at level 3, minimal hands on assistance, for transferring. (See Adult Services Manual (ASM) 121, 11-1-201, page 2) The testimony indicates the Appellant routinely used his walker to get up from seated positions. The ASW's understanding indicated there were also some boosts or pulls to assist with getting up. The HHS authorization for transferring is consistent with the functional ranking at level 3 and is upheld.

Eating

The ASW ranked the Appellant as a level 3 noting he needed food cut due to shaking, pain, limited movement and blindness. (Exhibit 1, page 13) The ASW understood that the Appellant did not need to be fed by another person. The ASW authorized 6 minutes 7 days per week (3 hours and 1 minute per month) of HHS for eating. (Exhibit 1, page 16; ASW Testimony)

The Appellant testified he can feed himself some foods, such as sandwiches. The Appellant is able to use a fork or spoon himself, but could not use a knife to cut. The Appellant stated he can not put a microwave dinner in. (Appellant Testimony) However, meal preparation is considered a separate activity in the HHS program.

The evidence was consistent with the functional ranking determination at level 3, minimal hands on assistance, for eating. (See Adult Services Manual (ASM) 121, 11-1-201, page 1) The Appellant's testimony confirmed that the only assistance provided with eating is having food cut. The HHS authorization for eating is consistent with the Appellant's needs for assistance with this activity and is upheld.

Mobility

The ASW ranked the Appellant as a level 3 noting he needed guiding with wheelchair/walker due to shaking, pain, limited movement and blindness. (Exhibit 1, page 14) The ASW understood that the Appellant needed some guiding but not total help. The ASW authorized 5 minutes 7 days per week (2 hours and 30 minutes per month) of HHS for mobility. (Exhibit 1, page 16; ASW Testimony)

The Appellant testified he has a walker and a wheelchair. The Appellant does not use the wheelchair much in his small home. The Appellant indicated he uses his walker in the home on his own. (Appellant Testimony)

The evidence was consistent with the functional ranking determination at level 3, minimal hands on assistance, for mobility. (See Adult Services Manual (ASM) 121, 11-1-201, page 3) The evidence indicates the Appellant mostly uses his walker in the

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home and there may be some times that guidance is needed. For example the testimony regarding earlier ADLs indicated there are issues with utilizing the walker when getting in/out of the bathroom. However, the HHS authorization of 5 minutes per day for mobility is rather low for the functional ranking at level 3 and the Appellant's needs. The HHS authorization for mobility should be increased to 10 minutes per day.

Medication

The ASW ranked the Appellant as a level 5 noting he is totally dependant with this activity due to shaking, pain, limited movement and blindness. (Exhibit 1, page 14) The ASW authorized 6 minutes 7 days per week (3 hours and 1 minute per month) of HHS for medication. (Exhibit 1, page 16; ASW Testimony)

The Appellant testified he takes 15-18 medications and a box is set up for 7 days at a time. The Appellant also could not take the medications out of the box on his own. (Appellant Testimony)

The evidence was consistent with the functional ranking determination of level 5, totally dependant, for medication. (See Adult Services Manual (ASM) 121, 11-1-201, page 3) The HHS authorization for medication is consistent with the functional ranking at level 5 and is upheld.

Housework, Shopping, Laundry and Meal Preparation

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 evidence indicates the Appellant lives alone. (Exhibit 1, page 11) Accordingly, the HHS hours for these IADLs would not be subject to proration. The Appellant was ranked as a level 4 for housework, laundry shopping and meal preparation. (Exhibit 1, page 15) The ASW understood that the Appellant could participate in performing these IADLs. For example, the Appellant could dust or wipe from a sitting position, sort laundry, verbally indicate what items are needed for shopping, and get snacks that are left within his reach. The ASW understood that two meals per day are prepared for the Appellant. (ASW Testimony) The ASW authorized 12 minutes 7 days per week (6 hours and 1 minute per month) for housework, 14 minutes once per week (1 hour per month) for laundry, 10 minutes once per week (43 minutes) per month for shopping, and 35 minutes seven days per week (17 hours and 33 minutes per month) for meal preparation. (Exhibit 1, page 16)

The Appellant testified he eats three times per day. The Appellant explained that his ex-wife used to make sandwiches and send them over, which he could get out of the fridge. The Appellant stated he is not able to sort laundry because of limitations with standing and sight. Regarding shopping, the Appellant can verbally tell someone items to put on a list and he rarely goes with on shopping trips. (Appellant Testimony)

The ASW authorized the maximum that policy allows for housework. The ASW also allotted sufficient time under meal preparation for the preparation of two meals per day. The HHS hours for housework and meal preparation are upheld.

The HHS hours authorized for laundry and shopping are considerably less than the maximum hours allowed under policy and are not sufficient to meet the Appellant's needs with these activities, as described in the Appellant's credible testimony. The Appellant's testimony also indicates he is totally dependant for laundry. The HHS hours for laundry and shopping should be increased to the maximums allowed by policy.

The Appellant's testimony indicated there have been some declines in his condition and functional abilities since the initial assessment. This hearing is limited to reviewing the determination made at the time of the initial assessment. The Appellant and the ASW currently assigned to his HHS case should discuss any changes in the Appellant's condition and functional abilities so that the Department can determine if any changes would be appropriate for the ongoing HHS authorization.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly assessed the Appellant's HHS case in the areas of dressing, toileting, transferring, eating, medication, housework and meal preparation but did not authorize appropriate HHS hours in the areas of bathing, grooming, mobility, laundry and shopping based on the available information.

IT IS THEREFORE ORDERED THAT:

The Department's decision is **PARTIALLY AFFIRMED** and **PARTIALLY REVERSED**. The HHS hours authorized for dressing, toileting, transferring, eating, medication, housework, and meal preparation are upheld. The HHS hours and functional rankings shall be adjusted retroactive to the [REDACTED] start date as follows:

- Bathing- functional ranking level 4 and HHS hours of 18 minutes per day 4 days per week
- Grooming- functional ranking level 4 and HHS hours of 10 minutes per day 4 days per week
- Mobility- functional ranking level 3 and HHS hours of 10 minutes per day 7 days per week
- Laundry- functional ranking level 5 and 7 HHS hours per month
- Shopping- functional ranking level 4 and 5 HHS hours per month

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

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cc:



Date Mailed: April 12, 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.