

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. 2013-25976 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.*, and upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████.

██████████, Appellant's father and legal guardian, appeared and testified on Appellant's behalf. ██████████, Appellant's mother and co-guardian; ██████████, Appellant's teacher; and ██████████, Executive Director of ██████████; also testified as witnesses for Appellant. Appellant, his sister, his sister's aide, and attorney ██████████ were present during the hearing, but did not testify.

██████████, Appeals Review Officer, represented the Department of Community Health. ██████████, Adult Services Worker (ASW), and ██████████, Adult Services Supervisor, from the ██████████ Office also appeared as witnesses for the Department.

ISSUE

Did the Department properly determine that Appellant's Home Help Services (HHS) should be reduced?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. Appellant is a ██████████ Medicaid beneficiary who has been diagnosed with autism. (Respondent's Exhibit A, pages 32).
2. Appellant's parents are also his legal guardians. (Respondent's Exhibit A, page 10).

Docket No. 2013-25976 HHS
Decision and Order

3. Appellant lives with his parents and siblings. (Testimony of ASW [REDACTED]; Testimony of Appellant's representative).
4. Appellant has been receiving HHS in the amount of 64 hours and 34 minutes per month, with a total care cost of \$ [REDACTED] per month. (Respondent's Exhibit A, page 13).
5. Specifically, HHS has been authorized for assistance with bathing, grooming, dressing, toileting, eating, housework, laundry, shopping, and meal preparation. (Respondent's Exhibit A, page 13).
6. On [REDACTED], ASW [REDACTED] conducted a home visit and reassessment of Appellant's services. Both Appellant and his parents were present during that visit. (Respondent's Exhibit A, pages 28-29).
7. Based on the reports of Appellant's parents; her own observations; and the applicable policy; ASW [REDACTED] decided to change Appellant's services and reduce them overall. (Respondent's Exhibit A, pages 28-29; Testimony of ASW [REDACTED]).
8. Specifically, ASW [REDACTED] decided to reduce the assistance authorized for grooming, dressing, eating, laundry, shopping, and meal preparation. ASW [REDACTED] also decided to increase the assistance authorized for housework. The assistance for all other tasks would remain the same. (Respondent's Exhibit A, pages 13, 38).
9. Overall, Appellant's HHS was to be reduced to 38 hours and 45 minutes per month, with a total care cost of \$ [REDACTED] per month. (Respondent's Exhibit A, page 38).
10. On [REDACTED], the Department sent Appellant written notice that his HHS would be reduced to \$ [REDACTED] per month on [REDACTED]. (Respondent's Exhibit A, pages 11, 23-27).
11. On [REDACTED], the Michigan Administrative Hearing System (MAHS) received a request for hearing filed on behalf of Appellant. (Respondent's Exhibit A, pages 3-9).
12. On [REDACTED], MAHS sent out notice of a telephone hearing scheduled for [REDACTED].
13. On [REDACTED], Appellant's representative requested an in-person hearing.
14. On [REDACTED], MAHS sent out notice of an in-person hearing scheduled for [REDACTED].

Docket No. 2013-25976 HHS
Decision and Order

15. On [REDACTED], the Department requested that the hearing be rescheduled due to the unavailability of the Department's witness.
16. On [REDACTED], MAHS sent out notice of a rescheduled in-person hearing scheduled for [REDACTED].
17. The in-person hearing was held on [REDACTED].
18. During the hearing, the Department's representative and witness agreed that a mistake had been made with respect to the HHS authorized for assistance with shopping and meal preparation. (Testimony of [REDACTED]; Testimony of [REDACTED]).
19. The Department's representative also stated that the Department was willing to authorize 2 hours and 30 minutes of HHS for assistance shopping per month and 12 hours and 30 minutes of HHS for assistance with meal preparation per month. (Testimony of [REDACTED]).

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.

Docket No. 2013-25976 HHS
Decision and Order

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

Docket No. 2013-25976 HHS
Decision and Order

be eligible to receive assistance with IADL's if the assessment determines a need at a level 3 or greater.

* * *

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). [ASM 101, pages 1-3 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:

Docket No. 2013-25976 HHS
Decision and Order

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 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.]

Here, while Appellant's HHS is set to go through a number of changes, not all of the Department's actions are disputed by Appellant. Appellant's representative does challenge the assistance authorized for the tasks of bathing, grooming, dressing, housework, laundry, shopping, and meal preparation.

Each disputed task will be addressed in turn. Appellant bears the burden of proving by a preponderance of the evidence that the Department erred in deciding to reduce those services.

██████████
Docket No. 2013-25976 HHS
Decision and Order

For the reasons discussed below, this Administrative Law Judge finds that, as amended during the hearing, the Department properly decided to reduce Appellant's HHS.

Bathing

Here, following the most recent assessment, Appellant remained ranked a "4" in bathing and his HHS with respect to that task were to continue at 22 minutes a day, 7 days a week. ASW ██████████ also testified that Appellant and his parents did not request more time for bathing.

Appellant's representative nonetheless argues that Appellant is totally dependent in the area of bathing and should be ranked a "5" for that task. However, Appellant's representative does not dispute that the 22 minutes per day actually authorized is sufficient.

This Administrative Law Judge appreciates Appellant's representative's argument that the Department ranked Appellant incorrectly with respect to bathing. However, even assuming Appellant's representative is correct, any error is immaterial if the time authorized is sufficient. Here, Appellant's representative expressly agreed that the time authorized is sufficient. Therefore, regardless of Appellant's ranking, the Department did not err in only authorizing 22 minutes a day for assistance with bathing.

Dressing

With respect to dressing, ASM 121, page 2 of 4 provides:

Dressing - Putting on and taking off garments; fastening and unfastening garments/undergarments, assisting with special devices such as back or leg braces, elastic stockings/garments and artificial limbs or splints.

- 1 No assistance required.
- 2 Client is able to dress self but requires reminding or direction in clothing selection.
- 3 Minimal hands-on assistance or assistive technology required. Client unable to dress self completely (i.e. tying shoes, zipping, buttoning) without the help of another person or assistive device.
- 4 Requires direct hands on assistance with most aspects of dressing. Without assistance would be inappropriately or inadequately dressed.
- 5 Totally dependent on others in all areas of dressing.

██████████
Docket No. 2013-25976 HHS
Decision and Order

In this case, the Department decided to reduce Appellant's assistance with dressing from 16 minutes a day, 7 days a week, to 2 minutes a day, 7 days a week.

According to ASW ██████████ notes and testimony, the reduction was based on Appellant's parents' reports that, while Appellant requires hands-on assistance to tie, the only other assistance he requires with dressing is monitoring and prompting. As testified to by ██████████ and stated in policy, the Department does not pay for prompting, supervising, monitoring, reminding, guiding, teaching or encouraging.

In response, Appellant's parents' testified that, while Appellant may be physically capable of dressing himself, he lacks the mental capacity to dress himself properly and no amount of prompting will make him do so. Instead, Appellant's provider must physically dress him and Appellant is totally dependent in this task.

However, while ██████████, Appellant's teacher, also discussed difficulties in getting Appellant to dress properly at school, the only specific instance she described was a time when extensive prompting did lead Appellant to dress himself properly. ██████████ also identified dressing as an area of success for Appellant.

Appellant bears the burden of proving by a preponderance of the evidence that the Department erred in reducing his bathing assistance. Here, Appellant has failed to meet that burden of proof given the clear policy against authorizing HHS for prompting or supervision, Appellant's physical capabilities, and ██████████ testimony regarding successful prompting.

Grooming

With respect to grooming, ASM 121, page 2 of 4, provides

Grooming - Maintaining personal hygiene and a neat appearance; including the combing/brushing of hair; brushing/cleaning teeth, shaving, fingernail and toenail care.

- 1 No assistance required.
- 2 Grooms self with direction or intermittent monitoring. May need reminding to maintain personal hygiene
- 3 Minimal hands-on assistance required. Grooms self but needs some assistance with activities of personal hygiene.
- 4 Requires direct hands-on assistance with most aspects of grooming. Would be at risk if left alone.
- 5 Totally dependent on others in all areas of grooming.

██████████
Docket No. 2013-25976 HHS
Decision and Order

Here, ASW ██████████ decided to reduce the assistance authorized with respect to grooming from 15 minutes a day, 7 days a week, to 10 minutes a day, 7 days a week.

As testified to ASW ██████████ and written in her notes, that reduction was based on her finding that, even though Appellant is not thorough and may be difficult to assist at times, Appellant is able to complete some grooming activities and is not totally dependent on others. She also testified that 10 minutes a day is the time suggested by the RTS and nothing justified more than that recommended time in this case, especially given the policy against authorizing HHS for prompting, guiding, supervising, and encouraging.

Petitioner's representative, on the other hand, testified that prompting does not work for grooming and that Appellant is totally dependent on others for grooming. He also testified that Appellant could physically groom himself, but simply will not do so.

As discussed above, the burden is on Appellant to prove by a preponderance of the evidence that the Department erred in reducing his grooming assistance. Given Appellant's undisputed physical capabilities and ability to be prompted to do other tasks, this Administrative Law Judge finds that Appellant is not totally dependent on physical assistance from others for grooming. HHS must not be approved for supervising, monitoring, reminding, guiding, teaching or encouraging. Moreover, the Department will not authorize HHS even where, as it appears to be the case here, physically assisting a beneficiary would be easier and more convenient than extensive prompting or guiding.

Shopping and Meal Preparation

At the time of the negative action notice in this case, the Department planned to reduce HHS for assistance with shopping to 2 hours and 9 minutes a month and HHS for assistance with meal preparation to 7 hours and 31 minutes a month.

However, during the hearing, the Department's representative and witness agreed that a mistake had been made with respect to the HHS authorized for assistance with those two tasks. The Department's representative also stated that the Department was willing to authorize 2 hours and 30 minutes of HHS for assistance shopping per month and 12 hours and 30 minutes of HHS for assistance with meal preparation per month.

Those new amounts represent the maximum prorated amount Appellant could receive for those tasks. With respect to the maximum allowable hours for IADLs, ASM 120, page 4 of 5, provides:

IADL Maximum Allowable Hours

There are monthly maximum hour limits on all instrumental activities of daily living except medication. The limits are as follows:

Docket No. 2013-25976 HHS
Decision and Order

- Five hours/month for shopping.
- Six hours/month for light housework.
- Seven hours/month for laundry
- 25 hours/month for meal preparation.

Moreover, with respect to proration of IADLs, the Department's policy also provides:

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. [ASM 120, page 4 of 5.]

The undisputed evidence in this case establishes that the Appellant was living with his parents and siblings. Given that other adults reside in the home, the Department was bound to follow the mandated policy and prorate the HHS time and payment for shopping and meal preparation by one-half. Accordingly, the maximum HHS Appellant could receive for shopping is 2 hours and 30 minutes a month while the maximum HHS he could receive for meal preparation is 12 hours and 30 minutes per month. As indicated during the hearing, the Department is now willing to authorize those maximum amounts and, given that those amounts are the maximum Appellant can receive, it did not err by only authorizing those amounts.

Laundry

In this case, Appellant's HHS for assistance with laundry are to be reduced from 30 minutes a day, 2 days a week (4 hours and 18 minutes a month), to 14 minutes a day, 1 day a week (1 hour a month).

██████████
Docket No. 2013-25976 HHS
Decision and Order

While ASW ██████████ notes refer to laundry assistance being reduced due to others living in Appellant's home and a need to prorate services, her rankings and testimony provide that the reduction was not based on proration because Appellant's laundry is done separate from the rest of his family. Instead, the reduction was based on reports that, while Appellant does not understand how to do laundry, he is able to fetch items, his parents were trying to teach him how to do his laundry, and his clothes take one load per week. Additionally, as testified to by ██████████, 14 minutes a week is the time suggested by the RTS for one load a week.

According to Appellant's parents, while they were trying to teach Appellant how to do his laundry, they were unable to do so. ██████████ also testified that attempts in school to teach Appellant how to do laundry were also unsuccessful. Appellant's mother further testified that she misspoke during the home visit and that Appellant's clothes and sheets take two loads a week.


As discussed above, Appellant bears the burden of proving by a preponderance of the evidence that the Department erred in reducing his HHS. Here, based on the reports that Appellant's clothes only take one load a week and that he was learning to assist or complete that task on his own, Appellant has failed to meet that burden. Appellant's parents now testify that those reports are mistaken, but this Administrative Law Judge is limited to reviewing the Department's decision in light of the information it had at the time it made that decision and, in this case, it was justified in relying on the statements made during the home visit.

Housework

With respect to housework, Appellant's HHS are to be increased from 4 hours and 18 minutes a month to 5 hours and 1 minute a month. Nevertheless, Appellant's representative argues that Appellant is still ranked too low.

However, given the maximum amount allowed by policy for assistance with housework (six hours a month), in addition to Appellant's shared living arrangements and the need to prorate any housework assistance by one-half, the most Appellant could receive for assistance with housework is 3 hours a month.

Here, Appellant's HHS for assistance with housework was increased to 5 hours and 1 minute per month. As Appellant is already receiving more than he is allowed by policy, the Department did not err by not further increasing his assistance with housework.

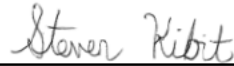

Docket No. 2013-25976 HHS
Decision and Order

DECISION AND ORDER


The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that, the Department properly decided to reduce Appellant's HHS.

IT IS THEREFORE ORDERED THAT:

The Department's decision, as amended during the hearing, is **AFFIRMED**.



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


Date Signed: 6/13/2013

Date Mailed: 6/14/2013

cc:



***** 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.