

**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. 2013-27149 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 care provider, appeared and testified on Appellant's behalf. Appellant was also present during the hearing. ██████████, Appeals Review Officer, represented the Department of Community Health. ██████████, Adult Services Specialist, and ██████████, Adult Services Supervisor, from the ██████████ County DHS 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 ██████ year-old Medicaid beneficiary who has been diagnosed with quadriplegia by a physician. Appellant and his representative also report diagnoses of urinary retention, closed head injury, a baclofen pump, and skin breakdowns. (Respondent's Exhibit A, pages 9, 14).
2. Appellant has been receiving HHS in the amount of 206 hours and 11 minutes per month, with a total care cost of \$██████████ per month. HHS was authorized for assistance with bathing, grooming, dressing, toileting, transferring, eating, mobility, taking medications, housework, laundry, shopping, and meal preparation. (Respondent's Exhibit A, page 16).

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3. On [REDACTED], [REDACTED] completed an in-home visit and reassessment of Appellant's services. Both Appellant and his provider/representative were present during that visit. (Respondent's Exhibit A, pages 18-19; Testimony of [REDACTED]).
4. Following that home visit, [REDACTED] decided to add assistance for range of motion exercises; prorate and reduce the assistance for housework, shopping, and meal preparation; terminate the assistance authorized for mobility; and reduce the assistance authorized for bathing, grooming, toileting, transferring, eating, and taking medication. The assistance authorized for dressing and laundry was to remain the same. (Respondent's Exhibit A, pages 15-16; Testimony of [REDACTED]).
5. Overall, Appellant's HHS were to be reduced to 146 hours and 19 minutes per month, with a care cost of \$ [REDACTED] per month. (Respondent's Exhibit A, page 15).
6. On [REDACTED], the Department sent a written notice notifying Appellant that his HHS would be reduced on [REDACTED]. (Respondent's Exhibit A, pages 5-8).
7. On [REDACTED], the Michigan Administrative Hearing System (MAHS) received a request for hearing filed by Appellant. (Respondent's Exhibit A, page 4).
8. On [REDACTED], MAHS received a letter from Appellant and his representative indicating that they did not dispute the reductions to bathing, toileting, transferring, eating and taking medication, but they were requesting more time for assistance with dressing and did dispute the reductions to grooming, mobility, housework, shopping and meal preparation. (Petitioner's Exhibit 1, pages 1-4). During the hearing, Appellant's representative testified to the same claims made in that letter. (Testimony of Appellant's representative).

**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.

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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.

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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

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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 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.

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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, as discussed above, while Appellant's HHS went through a number of changes, Appellant and his representative only dispute some of the Department's decision. Specifically, Appellant and his representative are requesting more time for assistance with dressing and disputing the reductions to grooming, housework, shopping and meal preparation, as well as the termination of mobility assistance. (Petitioner's Exhibit 1, pages 1-4; Testimony of Appellant's representative).

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 reducing those services and declining to authorize additional assistance with dressing.

### **Housework, Shopping, and Meal Preparation**

The assistance authorized for the IADLs of housework, shopping and meal preparation in this case were reduced by half. Housework assistance went from 12 minutes a day, 7 days a week (6:01 hours per month) to 6 minutes per day, 7 days a week (3:01 hours per month); shopping assistance went from 10 minutes a day, 7 days a week (5:01 hours per month) to 5 minutes a day, 7 days a week (2:30 hours per month); and meal preparation assistance went from 50 minutes a day, 7 days a week (25:05 hours per month) to 25 minutes a day, 7 days a week (12:32 hours per month). (Respondent's Exhibit A, pages 15-16).

Appellant was previously receiving the maximum assistance allowed by policy for those three tasks:

#### 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.

[ASM 120, page 4 of 5; Respondent's Exhibit A, page 24.]

According to ██████████, Appellant's need for assistance with those tasks has not changed and, instead, the reduction was based on the fact that Appellant lives with his caregiver and the Department's proration policy in such circumstances. (Testimony of ██████████).

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As provided by the Department's policy:

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; Respondent's Exhibit A, page 24.]

Here, it is undisputed that Appellant and his caregiver live together. Accordingly, [REDACTED] properly prorated and reduced the assistance authorized for the tasks of housework, shopping and meal preparation by one half.

In response, Appellant's representative testified that Appellant has a separate bedroom and bathroom that need to be cleaned; she shops for their items at different times, because it is too much to get all at once; and they eat their meals at separate times. (Testimony of Appellant's representative). However, even if that testimony is true, Appellant and his representative do share some common areas and it appears to be their choice that the shopping and meal preparation are not completed at the same time. Appellant's representative has not clearly documented that IADLs for the Appellant are completed separately from others in the home and the assistance for the disputed IADLs needs to be prorated.

Given the applicable policy, the Department should have also prorated assistance with laundry. However, to the extent it failed to follow policy, the Department did so in favor of Appellant and its failure to prorate laundry does not negate the proper reductions it did make.

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**Dressing**

The HHS authorized for assistance with laundry in this case remained the same after the most recent assessment and the Department plans to continue to authorize 40 minutes a day, 7 days a week (20:04 hours a month) of such assistance. (Respondent's Exhibit A, pages 15-16). Nevertheless, the HHS for dressing is in dispute as Appellant wants 58 minutes per day, 7 days a week of assistance.

██████████ testified that continue to authorize the same amount of assistance with dressing after Appellant and his representative reported the same needs and estimated times during the home visit. (Testimony of ██████████). Appellant's representative testified that they need more time because, while the 40 minutes a day is sufficient on most days, it is insufficient on the three days a week when Appellant is bathed because Appellant must be undressed and dressed one more time on those days. (Testimony of Appellant's representative.)

However, Appellant's representative is unsure if she reported those additional needs to ██████████ and ██████████ is adamant that Appellant's representative did not. (Testimony of Appellant's representative; Testimony of ██████████). This Administrative Law Judge is limited to reviewing the Department's decision in light of the time it made that decision and the information it had at the time it made its decision. Here, given the above testimony, this Administrative Law Judge finds that Appellant's representative did not report any additional needs with respect to bathing and that the Department was justified in relying on what it was told. Accordingly, the Department properly authorized the same amount of services as before. To the extent Appellant's needs have changed, Appellant and his representative need to bring those changes to the attention of their worker and request additional services in the future.

**Grooming**

The HHS authorized for assistance with grooming was reduced from 51 minutes a day, 7 days a week (25:35 hours per month) to 26 minutes a day, 7 days a week (13:03 hours per month). (Respondent's Exhibit A, pages 15-16). Appellant is now requesting that he be authorized for 30 minutes a day rather than 26. (Testimony of Appellant's representative).

██████████ testified that she based Appellant's ranking with respect to grooming and the time authorized for assistance with grooming on the reports made by Appellant and his representative/provider. According to ██████████, she accepted everything they said and authorized the time they asked for. (Testimony of ██████████).

Appellant's representative does not dispute that she and Appellant reported a need for 26 minutes of grooming assistance each day. However, she also testified that she was just estimating the time they needed and that, after the home visit, they actually timed how long grooming took them. (Testimony of Appellant's representative).



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However, as discussed above, this Administrative Law Judge is limited to reviewing the Department's decision in light of the time it made that decision and in the information it had at the time it made its decision. In this case, that decision was clearly proper given what Appellant and his representative reported and requested. To the extent Appellant has updated information, he can always request additional services in the future.

**Mobility**

Appellant was previously authorized for 40 minutes a day, 7 days a week of assistance with mobility, but, during the most recent assessment, the Department determined that all assistance with mobility should be terminated. (Respondent's Exhibit A, pages 15-16).


According to ██████████, she determined that mobility assistance should be terminated after Appellant and his provider/representative reported that Appellant requires no physical assistance with mobility inside the room as he is able to operate an electric wheelchair on his own. (Respondent's Exhibit A, page 12; Testimony of ██████████).

Appellant's representative does not dispute what was reported to ██████████, but she now testifies that Appellant needs assistance with mobility. Specifically, his representative must roll a commode from the bathroom to the bedroom back, as well as shoveling the ramp so Appellant can go outside. (Testimony of Appellant's representative).

However, it does not appear that the requested assistance is encompassed by mobility HHS. For example, rolling the commode back-and-forth is related to toileting while shoveling is non-covered yard work. As provided by ASM 121, page 3 of 4, the task of mobility has a limited definition:

**Mobility** - 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.

Moreover, even if the requested tasks were covered by mobility, it is undisputed that they were not discussed or requested during the most recent assessment. Once again, this Administrative Law Judge is limited to reviewing the Department's decision in terms of the time it made that decision and in light of the information it had at the time it made its decision. To the extent Appellant has updated information regarding his needs, he can always request additional services in the future.


  
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**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 Home Help Services.

**IT IS THEREFORE ORDERED THAT:**

The Department's decision is **AFFIRMED**.



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

cc:



Date Mailed: 4/23/2013

**\*\*\* 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.