

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

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IN THE MATTER OF:

██████████,

Appellant

Docket No. 2012-67465 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 her own behalf. ██████████, son and care provider, appeared as a witness for the Appellant. ██████████, 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 reduce the Appellant's Home Help Services ("HHS") 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 HHS.
2. The Appellant has been diagnosed with degenerative disc disease and lumbar radiculopathy/chronic back pain. Additional diagnoses of depression, coronary artery disease, rheumatoid arthritis and torn rotator cuff have also been reported. (Exhibit 1, page 14)
3. The Appellant had been receiving HHS for assistance with bathing, grooming, dressing, mobility, medication, housework, laundry, shopping and meal preparation with a total monthly care cost of \$██████████. The Appellant's son is the enrolled HHS provider. (Exhibit 1, page 17)
4. 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 Appellant's caregiver was not present. The Appellant reported being

unable to comb her hair with her right hand due to the rotator problem and stated her granddaughter assists with this activity. The Appellant is right handed. The Appellant also stated her granddaughter assists her with bathing and is paid from her son's check. Regarding dressing, the Appellant reported needing assistance with tying shoes, zippers on jeans and buttons. It was noted the Appellant generally wears simple clothes and does not wear shoes or jeans unless she is going out, which is infrequent. The ASW observed the Appellant take off a jacket she was wearing over a sleeveless dress without assistance. No needs for assistance with toileting were reported. The Appellant stated her son does her shopping and she does not go with him. The Appellant stated she could do simple straightening up. The Appellant explained that her son checks on her daily and brings a big nightly meal she can reheat for the next day. The Appellant stated she could fix simple meals and uses yogurts, fruit and does her own breakfast. The Appellant indicated she has a cane that she uses when needed and does not use her walker. The Appellant stated she is independent with mobility in her home. The Appellant brought the ASW her medications. (Exhibit 1, pages 11-13 and 15-16; ASW Testimony)

5. Based on the available information the ASW concluded that the Appellant's HHS authorization should be reduced. The ASW eliminated the HHS hours for bathing, grooming, dressing, mobility and medications. The ASW also reduced the HHS hours for laundry and meal preparation. (Exhibit 1, pages 17-18; ASW Testimony)
6. On ██████████, the Department sent the Appellant an Advance Action Notice, which informed her that effective ██████████, the HHS authorization would be reduced to \$██████████. (Exhibit 1, page 5)
7. On ██████████ the ASW spoke with the Appellant's son by phone. The Appellant's son reported assisting with medications, laundry, cooking, cleaning and shopping. Regarding cooking, he fixes meals ahead at his home. The Appellant's son reporting doing above and beyond what he is paid to do for his mother. (Exhibit 1, page 11)
8. On ██████████, the Appellant's request for hearing was received by the Michigan Administrative Hearing System. (Exhibit 1 page 4-5)

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) 101, 11-1-11, addresses HHS payments:

Payment Services Home Help

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.

*Adult Services Manual (ASM) 101,
11-1-2011, Page 1 of 4.*

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.

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 120, 5-1-2012), pages 1-4 of 5 addresses the adult services 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 will 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: 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 IADLs 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

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 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.

*Adult Services Manual (ASM) 120, 5-1-2012,
Pages 1-5 of 5*

Certain services are not covered by HHS. ASM 101 provides a listing of the 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 Adult Services Manual also addresses payment authorizations:

ADULT SERVICES AUTHORIZED PAYMENTS (ASAP)

The Adult Services Authorized Payments (ASAP) is the Michigan Department of Community Health payment system that processes adult services authorizations. The adult services specialist enters the payment authorizations using the **Payments** module of the **ASCAP** system.

No payment can be made unless the provider has been enrolled in Bridges. Adult foster care, homes for the aged and home help agency providers must also be registered with Vendor Registration; see ASM 136, Agency Providers.

Note: The adult services home page provides a link to the provider enrollment instructions located on the Office of Training and Staff Development web site.

Home help services payments to providers must be:

- Authorized for a specific period of time and payment amount. The task is determined by the comprehensive assessment in ASCAP and will automatically include tasks that are a level three or higher.
- Authorized **only** to the person or agency actually providing the hands-on services.

Note: An entity acting in the capacity of the client's fiscal intermediary is not considered the provider of home help and **must not** be enrolled as a home help provider; see ASM 135, Home Help Providers.

- Made payable jointly to the client and the provider.

Exception: Authorizations to home help agency providers are payable to the provider only. There are circumstances where payment authorizations to the provider only are appropriate, for example, client is physically or mentally unable to endorse the warrant. All single party authorizations must be approved by the supervisor.

- Prorate the authorization if the MA eligibility period is less than the full month.

Example: A client meets his/her MA deductible on the third of every month. ASCAP will process prorated month (s)

automatically. To prorate manually, divide the monthly care cost by the number of days in the month. Multiple the daily rate by the number of eligible days. Refer to the ASCAP User Guide for additional instructions on steps for prorating in ASCAP.

- Do **not** authorize payments to a **responsible relative**.
- Do not authorize a home help payment if there is not a MSA-4678 on file with the Michigan Department of Community Health; see ASM 135, Home Help Providers.

Any payment authorization that does **not** meet the above criteria must have the reason fully documented in the **Payments** module, exception rationale box, in **ASCAP**. The supervisor will approve or deny the authorization and provide comments in the rationale box as needed.

*Adult Services Manual (ASM) 140, 11-1-2011,
Pages 1-2 of 3.*

The Appellant had been receiving HHS for assistance with bathing, grooming, dressing, mobility, medication, housework, laundry, shopping and meal preparation with a total monthly care cost of \$██████████. The Appellant's son is the enrolled HHS provider. (Exhibit 1, page 17)

On ██████████, the ASW went to the Appellant's home and completed an in-home assessment for a review of the Appellant's HHS case. (Exhibit 1, pages 11-13; ASW Testimony) The ASW determined that the Appellant's HHS authorization should be reduced. The HHS hours for bathing, grooming, dressing, mobility and medications should be eliminated and the HHS hours for laundry and meal preparation should be reduced. The total monthly care cost of the reduced HHS authorization was \$██████████. (Exhibit 1, pages 17-18; ASW Testimony) On ██████████ the ASW also spoke with the Appellant's son by phone. (Exhibit 1, page 11; ASW Testimony)

The Appellant disagrees with the reductions to her HHS authorization. (Appellant Testimony) The Appellant's son testified he does more for his mother than what has been authorized. (Son Testimony) This ALJ does not doubt that the Appellant's son provides more assistance than what can be authorized through the HHS program. However, this ALJ can only review the Department's determinations regarding the ADLs and IADLs included in the HHS program.

Bathing and Grooming

The Appellant had been receiving 16 minutes 3 days per week (3 hours and 26 minutes per month) for bathing assistance and 8 minutes 4 days per week (2 hours and 18

minutes per month) for grooming assistance. (Exhibit 1, page 17) The ASW explained that she eliminated the HHS hours for bathing and grooming because the Appellant's son was not providing assistance with these activities and policy only allows for payment to the person doing the care. During the assessment, it was reported that the Appellant's granddaughter assists with bathing and she is paid from the Appellant's son's check. It was also reported that the Appellant's granddaughter assists with combing the Appellant's hair because the Appellant is right handed and has limitations due to a right arm rotator cuff problem. The ASW has since offered to have the Appellant's granddaughter enrolled as a provider, but the Appellant has so far declined. (Exhibit 1, pages 11-13 and 15-16; ASW Testimony)

The Appellant testified that she was not told her granddaughter could be paid until after she filed the hearing request. Accordingly, the Appellant has not felt that the ASW had her best interests in mind. (Appellant Testimony) The Appellant's son testified that he used to assist the Appellant with bathing and grooming, but now that his daughter has come of age, it is more appropriate for her to assist the Appellant with these activities. (Son Testimony) During the ██████████ telephone hearing proceedings, it became apparent that the Appellant was unaware she could have more than one enrolled HHS provider. (Appellant Testimony)

The above cited policy does not allow for payment to be made unless the provider has been enrolled and requires the HHS payment to be authorized only to the person or agency actually providing the hands-on services. While it is clear there was not a prompt and clear explanation of HHS policy to the Appellant regarding payment to enrolled providers and the option of having her granddaughter enrolled as a second provider, as of the ██████████ hearing date, the Appellant's granddaughter had not been enrolled as an HHS provider for the Appellant. The ASW's determination to eliminate the HHS hours for bathing and grooming because the only enrolled HHS provider, the Appellant's son, was not the person providing the assistance with this activity must be upheld.

Dressing

The Appellant had been receiving 10 minutes 4 days per week (2 hours and 52 minutes per month) for dressing assistance. (Exhibit 1, page 17) The ASW explained that she eliminated the HHS hours for dressing because the Appellant reported assistance is only needed infrequently, when she goes out. The Appellant reported needing assistance with tying shoes, zippers on jeans and buttons. It was noted the Appellant generally wears simple clothes and does not wear shoes or jeans unless she is going out. The ASW observed the Appellant take off a jacket she was wearing over a sleeveless dress without assistance. The ASW testified some limited HHS hours could be approved for dressing assistance for the infrequent times the Appellant goes out. (Exhibit 1, pages 11-13 and 15-16; ASW Testimony)

The testimony of the Appellant and her son indicates that the Appellant's son has been providing some hands on assistance with dressing. For example the Appellant's son will assist her with dressing when he comes to take the Appellant to doctor appointments. (Appellant and Son Testimony)

The ASW erred by completely eliminating the HHS hours for dressing assistance. The information provided to the ASW indicated some assistance was still being provided with dressing when the Appellant goes out. It does not appear that the ASW gathered sufficient information to determine how often this infrequent assistance was being provided. The HHS hours for dressing shall be reinstated at the previously authorized 2 hours and 52 minutes per month retroactive to the ██████████ effective date until a new assessment can be completed to determine how often assistance is being provided with dressing.

Mobility

The Appellant had been receiving 10 minutes 4 days per week (2 hours and 52 minutes per month) for mobility assistance. (Exhibit 1, page 17) The ASW explained that she eliminated the HHS hours for mobility because the Appellant reported she was independent with mobility in her apartment during the assessment. The ASW understood that the Appellant has a single prong cane that she uses when needed and that the Appellant does not use her walker. The ASW noted the policy does not allow for HHS payment for mobility assistance outside the home. (Exhibit 1, pages 11-13 and 15-16; ASW Testimony; See also Adult Services Manual (ASM) 121, 11-1-2011, Pages 3 of 4.)

The Appellant testified she believes she got the walker in ██████████ and she does not use it often at home. The Appellant mostly uses her cane at home. The Appellant does not do much walking when she is alone in case she passes out. The Appellant has given a copy of her key to her neighbor just incase. However, the Appellant testified that the passing out is a newer health issue. (Appellant Testimony)

The evidence does not support a finding that the Appellant's son was providing hands on assistance with mobility as defined for the HHS program. Rather, the Appellant's testimony indicates she uses her cane and does not do much walking at home. Accordingly, the elimination of HHS hours for mobility must be upheld.

Medications

The Appellant had been receiving 2 minutes 7 days per week (1 hour per month) for medication assistance. (Exhibit 1, page 17) The ASW's testimony indicated that the prior ASW noted medication assistance was authorized because the Appellant was forgetful. The ASW explained that she eliminated the HHS hours for medications because the Appellant was able to bring the ASW a bag with her medications in their containers and tell the ASW how often she takes them during the assessment. The ASW testified she held up each container, told the Appellant what the medication was and the Appellant was able to state what condition she takes the medication for and how often she takes its. However, the ASW acknowledged that she did not ask the Appellant if she is able to open the medication containers, despite the Appellant having reported some limitations with her hands. (Exhibit 1, pages 11-13 and 15-16; ASW Testimony)

The Appellant testified that she did not tell the ASW the names of her medications and how often she takes them after getting the bag of medications during the assessment.

The Appellant indicated she has some problems memory related to her medications, and an August hospitalization may have been due to taking too much of her blood pressure medication. When discussing the rheumatoid arthritis diagnosis, the Appellant stated she has trouble with her hands, which are swollen, and she has dropped things. The Appellant gets her medications in containers that are not child proof and some days she would be able to open them herself. (Appellant Testimony) The Appellant's son testified that he sets up the Appellant's medication in trays, has written down for the Appellant how often to take her medications and he comes over to check or calls the Appellant to be sure she took her medication correctly. (Son Testimony)

Regardless of whether assistance is proved due to memory issues or difficulties with opening the containers on some days, the evidence indicates that the Appellant needs and her son has been providing some hands on assistance with setting up the Appellant's medications. The HHS hours for medication assistance shall be reinstated at the previously authorized 1 hour per month retroactive to the ██████████ effective date.

Laundry

The Appellant had been receiving 14 minutes 7 days per week (7 hours and 1 minute per month) for laundry assistance. (Exhibit 1, page 17) The ASW reduced the HHS authorization for laundry to 12 minutes 7 days per week (6 hours and 1 minute per month). (Exhibit 1, page 18) The ASW explained that even for someone who can not do any part of this activity, the Department policy only allows for a maximum of 7 hours per month. The ASW acknowledged that the Appellant would not be able to carry a laundry basket to other building where the laundry facilities are located. However, the ASW reduced the Appellant's authorization from the maximum by 1 hour per month because she determined that the Appellant could fold and put laundry away. (Exhibit 1, pages 11-13 and 15-16; ASW Testimony)

The Appellant and her son did not provide any specific evidence regarding the Appellant's functional abilities and needs for assistance with laundry. Accordingly, the reduction to the HHS hours for laundry is upheld.

Meal Preparation

The Appellant had been receiving 28 minutes 7 days per week (14 hours and 3 minutes per month) for meal preparation assistance. (Exhibit 1, page 17) The ASW reduced the HHS authorization for laundry to 16 minutes 4 days per week (4 hours and 35 minutes per month). (Exhibit 1, page 18) The ASW explained this was based on her understanding from the assessment that the Appellant can make her own breakfast, prepare simple meals for lunch, and her son brings over suppers that the Appellant can reheat. (Exhibit 1, pages 11-13 and 15-16; ASW Testimony)

The Appellant and her son did not provide any specific evidence regarding the Appellant's functional abilities and needs for assistance with meal preparation. Accordingly, the reduction to the HHS hours for meal preparation is upheld.

Changes in the Appellant's condition

The evidence indicates the Appellant has had significant changes in her condition since the ██████████ home visit, including the recent discovery of a brain tumor. (Exhibit 1, page 11, Appellant Testimony) However, this hearing is limited to reviewing the Department's ██████████ determination to reduce the Appellant's HHS authorization based on the information available at that time. If she has not already done so, the Appellant may wish to provide the Department with updated medical verification of her diagnoses, functional abilities and needs for assistance so that a new assessment can be completed to determine the appropriate 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 improperly reduced the Appellant's HHS authorization in the areas of dressing and medications based on the available information.

IT IS THEREFORE ORDERED THAT:

The Department's decision is PARTIALLY AFFIRMED and PARTIALLY REVERSED. The Department shall:

- Reinstatement of the HHS hours for dressing at the previously authorized 2 hours and 52 minutes per month retroactive to the ██████████ effective date until a new assessment can be completed to determine how often assistance is being provided with dressing.
- Reinstatement of the HHS hours for medication assistance at the previously authorized 1 hour per month retroactive to the ██████████ effective date.

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

[REDACTED]
Docket No. 2012-67465 HHS
Decision and Order

cc:

[REDACTED]

Date Mailed: 1/9/2013

***** 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.