

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

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IN THE MATTER OF:

██████████,

Appellant.

Docket No. 2013-14627 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 appeared and testified on his own behalf. ██████████, Appellant's service provider, also testified on Appellant's behalf. ██████████, Appeals Review Officer, represented the Department of Community Health. (Department) ██████████haw, Adult Services Worker (ASW) and ██████████, Adult Services Supervisor, appeared as witnesses for the Department.

ISSUE

Did the Department properly calculate Appellant's time and task assignments in his Home Help Services (HHS) with regard to toileting?

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 chronic myofascial back pain, traumatic brain injury, mild concussion, torn rotator cuff, and poor hearing. (Exhibit A, page 12).
2. On ██████████, ASW ██████ completed an in-home visit and reassessment of Appellant's services. (Exhibit A, p 9). ASW ██████ testified that Appellant did not mention his need for assistance with toileting during the assessment. ASW ██████ also noted that Appellant does have difficulty remembering. (Exhibit A, p 9; Testimony).
3. On ██████████, the Department received Appellant's annual Medical Needs form, DHS-54A, from ██████████, MD. ██████████ certified on the form that Appellant needed assistance with toileting. (Exhibit B, p 1).

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4. On [REDACTED], ASW [REDACTED] sent Appellant a Services and Payment Approval notice indicating that Appellant's assessment had been completed and that his provider would be paid \$ [REDACTED] per month to complete HHS. HHS was authorized for assistance with bathing, grooming, dressing, eating, housework, laundry, shopping, meal preparation, mobility, and taking medications. The notice did not include time for toileting. (Exhibit A, p 7; Testimony).
5. On [REDACTED], ASW [REDACTED] spoke to Appellant on the phone regarding his need for assistance with toileting. (Exhibit B, p 2; Testimony).
6. On [REDACTED], ASW [REDACTED] sent Appellant an updated Services and Payment Approval notice indicating that toileting had been added as a service and that payment to Appellant's provider would be increased to \$ [REDACTED] per month, effective [REDACTED]. (Exhibit A, p 9-10; Testimony).
7. Prior to the [REDACTED] notice, Appellant filed an appeal on [REDACTED], indicating that he did not agree with the current Proposed Time and Task Assignments because they did not include the task of toileting. (Exhibit 1).

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. For example, 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.

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

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

These activities must be certified by a Medicaid enrolled medical professional and may be provided by individuals or by private or public agencies. **The medical professional does not prescribe or authorize personal care services.** Needed services are determined by the comprehensive assessment conducted by the adult services specialist.

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

Activities of Daily Living (ADL)

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

Instrumental Activities of Daily Living (IADL)

- Taking medication.
- Meal preparation/cleanup.
- Shopping for food and other necessities of daily living.
- Laundry.
- Housework.

An individual must be assessed with at least one Activity of Daily Living (ADL) in order to be eligible to receive home help services.

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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. [REDACTED] would be eligible to receive assistance with IADL's if the assessment determines a need at a level 3 or greater. [ASM 101, pages 1-2 of 4.]

Moreover, ASM 120 states:

Functional Assessment

The **Functional Assessment** module of the **ASCAP** comprehensive assessment is the basis for service planning and for the home help services payment.

Conduct a functional assessment to determine the client's ability to perform the following activities:

Activities of Daily Living (ADL)

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

Instrumental Activities of Daily Living (IADL)

- Taking Medication
- Meal Preparation and Cleanup
- Shopping
- Laundry
- Light Housework

Functional Scale

ADLs and IADLs are assessed according to the following five-point scale:

1. Independent: Performs the activity safely with no human assistance.

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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.

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 6.]

Appellant bears the burden of proving by a preponderance of the evidence that the Department erred in not providing toileting services for the Appellant from the ██████████ assessment.

The Department witness testified that Appellant did not mention the need for toileting at the ██████████ assessment and that when he did mention it during a telephone call on ██████████ she included toileting in his services, effective back to ██████████.

Appellant testified that he did mention to ASW ██████████ that he used adult diapers at the ██████████ assessment and that she sent him information following the assessment regarding how and where to obtain the diapers. (Appellant brought this information to the hearing, but due to a problem with the Department's fax machine, it was not forwarded to this ALJ). Appellant also pointed out that his Medical Needs form indicated that he needed assistance with toileting and that ASW ██████████ should have referred to that form before sending out the Services and Payment Approval notice on ██████████. Appellant also testified that he tried to call ASW ██████████ and others in the Department many times following his receipt of the Services and Payment Approval notice in ██████████, but no one ever called him back. Appellant testified that his provider was paid for providing toileting services in ██████████, but that she should also have been paid for providing toileting services in ██████████ and ██████████.

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The Department representative asked Appellant why his provider did not check off toileting on his Provider Logs for [REDACTED] and [REDACTED] if she was in fact providing that service. (Exhibit B, pp 10-11). Appellant responded that toileting was not marked by the Department as an approved service on the logs, so he did not want his provider to mark it off. Appellant indicated that he has gotten into trouble in the past for doing so and did not want to be seen as forging or altering the document. Appellant indicated that he has repeatedly asked for updated Provider Logs that show toileting as an approved service, but has yet to receive them.

Here, it is clear that Appellant has required assistance with toileting since at least [REDACTED]. Appellant broached the subject with ASW [REDACTED] during the [REDACTED] reassessment by indicating that he needed adult diapers, evidenced by the fact that ASW [REDACTED] sent Appellant information following the visit about where to obtain such diapers. It is also clear that Appellant's doctor indicated in Appellant's Medical Needs form, received by the Department on [REDACTED], that Appellant needed assistance with toileting. This Medical Needs form was received by the Department before ASW [REDACTED] notified Appellant of the results of the assessment on [REDACTED]. As such, ASW [REDACTED] should have known that Appellant needed assistance with toileting in [REDACTED] and Appellant's provider should be paid for providing that service in [REDACTED] and [REDACTED].

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department erred in denying Appellant's provider payment for toileting services in [REDACTED] and [REDACTED]. The Department has already provided payment for toileting services for [REDACTED] and going forward. The Department shall reimburse Appellant's provider for toileting services in [REDACTED] 012 and [REDACTED].

IT IS THEREFORE ORDERED THAT:

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

/s/ _____
Robert J. Meade
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health


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cc:



Date Mailed: January 25, 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.