

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

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IN THE MATTER OF:

██████████,

Appellant.

Docket No. 2013-41146 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 brother and care provider, appeared and testified on Appellant's behalf. ██████████, Appeals Review Officer, represented the Department of Community Health. ██████████, Adult Services Worker (ASW), appeared as a witness for the Department.

ISSUE

Did the Department properly reduce Appellant's Home Help Services (HHS)?

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 born on ██████████ and has been diagnosed with bipolar disorder mixed; schizoaffective disorder; extreme allergies; migraine headaches; hypercholesterolemia; and fibromyalgia. (Respondent's Exhibit A, pages 19, 21).
2. Appellant also reports suffering from Multiple sclerosis (MS), but her representative testified that Appellant does not have that condition. (Testimony of Appellant's representative).
3. Appellant had been receiving HHS in the amount of 49 hours and 18 minutes per month, with a total care cost of \$ ██████████ per month. (Respondent's Exhibit A, page 22).
4. Specifically, HHS had been authorized for assistance with grooming, taking medication, light housework, laundry, shopping, and meal preparation. (Respondent's Exhibit A, page 24).

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5. The assistance for the task of grooming was authorized for two days a week while the assistance for all other tasks was authorized for seven days a week. (Respondent's Exhibit A, page 22).
6. On ██████████, ASW ██████████ conducted a home visit and reassessment of Appellant's services. Only Appellant was present during that visit and ASW ██████████ noted that, due to Appellant's mental illness, the ASW also needed to speak with Appellant's provider. (Respondent's Exhibit A, page 17).
7. On ██████████ ██████████ ██████████ ASW ██████████ and Appellant's provider/representative spoke on the telephone. (Respondent's Exhibit A, page 16).
8. During that conversation, Appellant's provider reported that he only provides assistance for Appellant three days a week. (Testimony of Appellant's representative; Respondent's Exhibit A, page 16).
9. Based on that report, ASW ██████████ decided to adjust Appellant's HHS. (Testimony of ASW ██████████).
10. Specifically, ASW ██████████ changed the days per week of assistance for each task to three days a week, which involved an increase in days for the task of grooming and a decrease for all other approved tasks. (Respondent's Exhibit A, pages 22-23).
11. ASW ██████████ also increased the minutes per day of assistance authorized for the tasks of housework, laundry, shopping, and meal preparation. (Respondent's Exhibit A, pages 22-23).
12. Overall, Appellant's services were reduced to 25 hours and 22 minutes per month, with a total monthly care cost of \$ ██████████. (Respondent's Exhibit A, page 23).
13. On ██████████, the Department sent Appellant written notice that her HHS would be reduced on ██████████. (Respondent's Exhibit A, page 5).
14. On ██████████, the Michigan Administrative Hearing System (MAHS) received a request for hearing in this matter. (Respondent's Exhibit A, 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 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.

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:

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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 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:

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.

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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.

* * *

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.

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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, pages 2-4 of 5.]

Here, the Department reduced Appellant's HHS from 49 hours and 18 minutes per month, with a total care cost of \$██████████ per month, to 25 hours and 22 minutes per month, with a total monthly care cost of \$██████████. (Respondent's Exhibit A, pages 22-23).

While Appellant's services were reduced, the Department continued to authorize assistance for the same tasks as before. Moreover, the minutes per day approved for assistance with those tasks either stayed the same or, in most cases, were increased. (Respondent's Exhibit A, pages 22-23).

The reduction was instead based solely on a change in the number of days per week HHS was to be provided. As described above, ASW ██████████ changed the days per week of assistance for each task to three days a week. Such a change involved an increase in the days per week for assistance with grooming, which had been at two days a week, but a decrease for all other approved tasks. Assistance with those other tasks had previously been authorized for seven days a week. (Respondent's Exhibit A, page 22-23).

Appellant and her representative bear the burden of proving by a preponderance of the evidence that the Department erred in reducing her services. Here, Appellant and her representative have failed to meet that burden of proof.

ASW ██████████ testified and wrote in her notes that she changed Appellant's HHS to three days a week based on the report of Appellant's provider/representative that he only provided services three days a week. HHS can only be approved for services actually being provided and ASW reduced the HHS to reflect what she was told. (Testimony of ASW ██████████; Respondent's Exhibit A, page 16).

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***** 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.