

**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. 2013-51459 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, an in-person hearing was held on ██████████. Attorney ██████████ appeared on behalf of Appellant. Appellant also appeared and testified. ██████████, Appellant's caregiver appeared, but offered no testimony. ██████████, Appeal Review Officer appeared on behalf of the Department of Community Health (Department). ██████████, Adult Services Supervisor and ██████████, Adult Services Worker (ASW) appeared as witnesses 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 ██████ year-old Medicaid beneficiary, born November 24, 1964, who has been diagnosed with quadriplegia, lower back pain, ingrown toenail, and urinary tract infections. (Exhibit A, p 16)
2. Appellant lives alone in a rental property and requires extensive assistance with all of her Activities of Daily Living (ADL's) and Instrumental Activities of Daily Living (IADL's). Appellant is paralyzed, wheelchair bound, and has very little use of her arms and hands. (Exhibit A, pp 45-56; Testimony)
3. On ██████████, the ASW sent Appellant an Advance Negative Action Notice informing her that the hourly rate paid to her chore providers would be decreased from \$██████ per hour to \$██████ per hour, effective ██████████. (Exhibit A, pp 8-10; Testimony)
4. On ██████████, Appellant had a telephone conversation with ██████████, Adult Services Supervisor. The Supervisor discussed some of

Appellant's care needs and the time required to assist with those needs, but the telephone call did not constitute a full, in-home reassessment of Appellant's needs, as required by policy. (Exhibit A, pp 27-29; Testimony)

5. On ██████████, the ASW sent Appellant an Advance Negative Action Notice informing her that her monthly HHS payment was reduced to \$██████████ due to the reduction in the hourly rate. However, the Notice also informed Appellant that the total monthly hours of HHS approved was 161 hours and 7 minutes. Previously, Appellant had been receiving 210 hours of HHS per month. The ASW could not explain at the hearing what led to the reduction in HHS hours. (Exhibit A, pp 12-15, 36, 45; Testimony)
6. Appellant's Request for Hearing was received by the Michigan Administrative Hearing System on ██████████. In her Request for Hearing, Appellant indicated that she was requesting a hearing because her hours had been cut from 210 hours per month to 161 hours per month. (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 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.

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### **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.

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### **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.

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### **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.

██████████  
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**Decision and Order**

The ASW testified that on ██████████, she sent Appellant an Advance Negative Action Notice informing her that the hourly rate paid to her chore providers would be decreased from \$ ██████ per hour to \$ ██████ per hour, effective ██████████. The ASW testified that on ██████████, she sent Appellant an Advance Negative Action Notice informing her that her monthly HHS payment was reduced to \$ ██████ due to the reduction in the hourly rate. The ASW admitted, however, that the same Notice also informed Appellant that she was now approved for 161 hours and 7 minutes of HHS per month. The ASW also reviewed notes from an ██████████ telephone conversation between Appellant and her Adult Services Supervisor. In the notes, it indicates that the Supervisor discussed some, but not all, of Appellant's care needs and the time required to assist with those needs. The ASW testified that she believed the only reason Appellant's HHS hours were reduced was because of the reduction in the hourly rate from \$ ██████ per hour to \$ ██████ per hour.

Appellant testified that she has been receiving HHS for over █ years, ever since a gunshot wound made her a quadriplegic. Appellant testified that prior to ██████████ she had always received 209 hours and 45 minutes of HHS per month. Appellant indicated that she knew this to be true because she had been calling the same hours in to the Department each month for over █ years. Appellant indicated that she did speak to an Adult Services Supervisor via telephone on ██████████ 2013 about some of her care needs, but they did not discuss all of her needs.

Based on the evidence presented, Appellant has proven, by a preponderance of the evidence, that there was a reduction in her HHS hours and that the reduction was inappropriate. In addition to Appellant's un rebutted testimony that she has been receiving approximately 210 hours of HHS per month for over █ years, the record also supports this testimony. (See Exhibit A, p 36, where Appellant calls in 210 hours for her workers and Exhibit A, p 45, where the Department pays Appellant's workers for 210 hours). Given that Appellant has been receiving 210 hours of HHS per month, the Negative Action Notice sent to Appellant on ██████████ indicating that she was approved for 161 hours and 7 minutes constituted a reduction. This reduction was inappropriate because the action was taken without a full reassessment of Appellant's needs, in-person, including an interview with Appellant's provider, as required by policy.

The Department's assertion that the reduction in HHS *hours* only occurred because there was a reduction in the *hourly rate* paid to Appellant's providers is without merit. A beneficiary's HHS hours are determined by an assessment independent of what hourly rate is paid to the beneficiary's provider. As was explained at the hearing, if the hourly rate is reduced then the provider may receive less money for doing the same amount of work, but a reduction in the hourly rate will have no effect on the total number HHS hours a beneficiary is entitled to.

It should also be noted that Appellant has separately appealed the reduction in the hourly rate paid to her providers. However, that issue is on appeal and is not at issue in the instant matter.

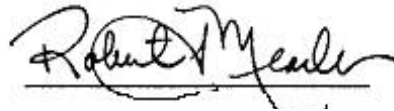
**DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department improperly reduced Appellant's HHS hours.

**IT IS THEREFORE ORDERED THAT:**

The Department's decision to reduce Appellant's HHS hours is REVERSED.

Appellant shall continue to receive 210 hours of HHS per month until or unless the Department conducts a full, in-person reassessment of Appellant's needs that shows Appellant is entitled to a different amount of HHS.



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

[REDACTED]  
cc: [REDACTED]

Date Signed: October 21, 2013

Date Mailed: October 21, 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 must 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.