

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

P.O. Box 30763, Lansing, MI 48909
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IN THE MATTER OF:

██████████,

Appellant.

Docket No. 2013-56617 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. ██████████, Appeals Review Officer, represented the Department of Community Health. ██████████, Adult Services Worker (ASW), and ██████████, Adult Services Supervisor, from ██████████ DHS 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 who has been diagnosed with arthritis and residual effects from a broken right femur. (Respondent's Exhibit A, page 9).
2. Appellant has been receiving HHS through the Department and, prior to the negative action at issue in this appeal, was approved for \$ ██████ of HHS per month. (Respondent's Exhibit A, page 15).
3. Specifically, HHS had been authorized for assistance with dressing, housework, laundry, shopping, and meal preparation. (Respondent's Exhibit A, page 13).
4. On ██████████, ASW ██████ conducted a home visit and reassessment of Appellant's services. Appellant was present for that visit, but his provider was not. (Testimony of ASW ██████).

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5. At that time, ASW [REDACTED] noted that Appellant lived with a roommate. (Respondent's Exhibit A, page 8; Testimony of ASW [REDACTED]).
6. During that visit, Appellant reported that the only dressing assistance he needs is occasional help putting on his socks and shoes. (Testimony of ASW [REDACTED]).
7. Due to the unavailability of Appellant's provider, the reassessment could not be completed at the time of the home visit. However, on [REDACTED], both Appellant and his provider came into the local DHS office and the reassessment was completed. (Respondent's Exhibit A, page 12; Testimony of ASW [REDACTED]).
8. ASW [REDACTED] subsequently determined that Appellant's HHS must be reduced. Assistance with dressing was to be reduced because Appellant required less assistance than what was being paid for. Assistance with all other tasks was to be reduced pursuant to the Department's proration policy because Appellant had a shared living arrangement with another adult. (Testimony of ASW [REDACTED]).
9. After the changes, Appellant would receive 23 hours and 34 minutes of HHS per month, with a total monthly care cost of \$ [REDACTED]. (Respondent's Exhibit A, page 13).
10. On [REDACTED], the Department sent Appellant written notice that his HHS would be reduced on [REDACTED] in order to bring them into compliance with policy and reflect the actual assistance being provided. (Respondent's Exhibit A, pages 5-8).
11. On [REDACTED], 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

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included in Home Help Services and how such services are assessed. In part, ASM 101, pages 1-3 of 4, 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.

Instrumental Activities of Daily Living (IADL)

- Taking medication.
- Meal preparation/cleanup.

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- 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

Moreover, ASM 120, pages 2-4 of 5, 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

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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. 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.

In this case, the Department reduced Appellant's HHS for every task he was receiving assistance with: dressing, housework, laundry, shopping, and meal preparation.

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Appellant bears the burden of proving by a preponderance of the evidence that the Department erred in reducing his HHS.

For the reasons discussed below, this Administrative Law Judge finds that Appellant has failed to meet that burden of proof and that the Department's decision to reduce his HHS must be sustained.

Dressing

As discussed above, ASW ██████████ determined that Appellant's HHS with respect to dressing had to be reduced because Appellant required less assistance than previously authorized. Specifically, Appellant's assistance with dressing was reduced from 14 minutes a day, 4 days a week, to 7 minutes a day, 4 days a week. According to ASW ██████████, she based that reduction on Appellant's report that the only dressing assistance he required was occasional help with putting on his socks and shoes.

During the hearing, Appellant confirmed that ASW ██████████'s record of what he reported is correct and that he only sometimes needs assistance with putting on his socks and shoes.

To the extent that Appellant disputes the reduction in dressing assistance, he has failed to meet his burden of proof and the decision to reduce is affirmed. Appellant only requires very limited assistance with that task and the time allocated for assistance is sufficient.

IADLS

With respect to the IADLs of housework, laundry, shopping and meal preparation, the Department reduced Appellant's HHS by half pursuant to its proration policy. That policy states:

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

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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

Here, it is undisputed that Appellant lives in a shared living arrangement with another adult. Accordingly, ASW ██████████ prorated and reduced his HHS for all IADLs by one half.

In response, Appellant testified that, while he does live with another adult, his provider only does housework, laundry, shopping and meal preparation for the benefit of Appellant. In particular, Appellant testified that he and his roommate have separate living areas, with the exception of a shared kitchen, and that they do not eat the same meals or even eat any meals together. Appellant further testified that his provider only does Appellant's laundry and only shops for Appellant's needs.

The above proration policy is clear and the Department must prorate the assessed hours for all IADLs in shared living arrangements where other adults reside in the home unless it can be clearly documented that IADLs for the eligible client are completed separately from others in the home.

Here, Appellant testified that the assistance for IADLs is completed separately from his roommates, but his claims are not clearly documented and they do not rise to the examples given by policy, such as special dietary needs leading to separate meals and separate shopping, or incontinence leading to separate laundry. The burden of proof is on Appellant to demonstrate that the proration policy should not be applied in this case and, given the record in this case, Appellant has failed to meet that burden of proof. Therefore, the decision to prorate assistance with IADLs must also be sustained.

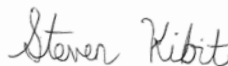

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DECISION AND ORDER


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

IT IS THEREFORE ORDERED THAT:

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



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


Date Signed: 9/20/2013

Date Mailed: 9/20/2013

cc:



***** 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.