

**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:

Docket No. 2013-57812 HHS

████████████████████,

████████████████████

Appellant.

_____ /

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 C.F.R. § 431.200 *et seq.*, upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████ ██████████. Appellant's spouse appeared and testified on Appellant's behalf. Appellant was also present but did not testify. ██████████ Appeals Review Officer, represented the Department of Community Health. ██████████ Adult Services Worker (ASW), from the ██████████ County DHS Office appeared as a witness for the Department. ██████████ ██████████, Adult Services Supervisor was also present but did not testify.

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 receiving HHS. (Exhibit A, p. 8 and testimony).
2. Appellant has been diagnosed with degenerative leg muscle, dislocated discs, some kidney failure, heart valve problems and lumbar radiculitis. (Exhibit A, pp. 18, Exhibit B, p. 2 and testimony).
3. On ██████████, Dr. ██████████ M.D. completed a DHS 54A Medical needs form. Dr. ██████████ certified a medical need for assistance with personal care items, and circled shopping, laundry, and housework. (Exhibit B, p. 2).

4. On ██████████ ASW ██████████ did a face-to-face home call with the Appellant and her nephew/provider and Appellant's husband. The ASW completed a comprehensive reassessment of the Appellant's need for services. The ASW redetermined the time and tasks to be authorized for Appellant's HHS finding that some items had to be decreased according to the policy contained in the Adult Services Manual and according to the guidelines set forth in the Reasonable Time Schedule the ASW is required to follow as a guideline for authorization of HHS services. (Exhibit A, pp. 14-15, 22, Exhibit B, p. 3 and testimony).
5. On ██████████, the Department issued an Advance Negative Action Notice to Appellant notifying her that her HHS would be reduced to a total monthly care cost of ██████████, effective ██████████. The Notice stated mobility was remove as Appellant uses a cane to assist with mobility, provider only cooks occasionally (special meals), and shopping was reduced because the provider occasionally does the shopping and the client's daughter normally does the shopping. (Exhibit A, pp. 5-9, 22 and testimony).
6. On ██████████, MAHS received Appellant's Request for Hearing. Appellant completed the Request for Hearing and stated she did not agree with the negative action because the chore provider also does yard maintenance, cutting/mowing the lawn, clearing the snow, and taking her to the doctors for treatments. (Exhibit A, p. 4-7).

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 101 (11-1-2011) (hereinafter "ASM 101") and Adult Services Manual 120 (11-1-2011) (hereinafter "ASM 120") address the issues of what services are included in Home Help Services and how such services are assessed:

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.
- 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. [ASM 101, pages 1-2 of 4, emphasis added].

Services not Covered by Home Help Services

Home help services must **not** be approved for the following:

- Supervising, monitoring, reminding, guiding or encouraging (functional assessment rank 2); [ASM 101, page 3 of 4].

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 must 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. This form is primarily used for APS cases.
- Follow rules of confidentiality when home help cases have companion adult protective services 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

Home Help Payments may only be authorized for needs assessed at the level 3 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.

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.

Complex Care Needs

Complex care refers to conditions requiring intervention with special Needs techniques and/or knowledge. These complex care tasks are performed on client's whose diagnoses or conditions require more management. The conditions may also require special treatment and equipment for which specific instructions by a health professional or client may be required in order to perform.

- Eating and feeding.
- Catheters or legs bags.
- Colostomy care.
- Bowel program.
- Suctioning.
- Specialized skin care.
- Range of motion exercises.

- Peritoneal dialysis.
- Wound care.
- Respiratory treatment.
- Ventilators.
- Injections.

When assessing a client with complex care needs, refer to the complex care guidelines on the adult services home page.

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.**

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 adjoined 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.

Responsible Relatives

Activities of daily living may be approved when the responsible relative is **unavailable** or **unable** to provide these services.

Note: Unavailable means absence from the home for an extended period due to employment, school or other legitimate reasons. The responsible relative must provide a work or school schedule to verify they are unavailable to provide care. **Unable** means the responsible person has disabilities of their own which prevent them from providing care. These disabilities must be documented/verified by a medical professional on the DHS-54A, Medical Needs form. Do **not** approve shopping, laundry, or light housecleaning, when a responsible relative of the client resides in the home, **unless** they are unavailable or unable to provide these services. Document findings in the general narrative in ASCAP. [ASM 120, pp. 1-5, emphasis added].

The testimony and evidence presented at the hearing demonstrated that the ASW properly redetermined the Appellant's needs for home help services based on the information she was provided by the Appellant and her nephew/provider for the comprehensive reassessment, despite the fact that her doctor did not certify a need for assistance with any of her ADLs. The Appellant's husband was present during the reassessment, but he indicated that he and the Appellant have been separated since ██████████ and he does not have an active role in the Appellant's life. A check of his ID showed that he resided at a different address.

The ASW determined that the Appellant lives with three adult grandchildren, and the provider nephew. Appellant indicated she had thyroid problems, diabetes and depression. She also stated she sometimes uses a cane to get around. Appellant indicated her daughter assists her with bathing and grooming, and sometimes she needs help getting dressed. The Appellant's nephew indicated Appellant could not cook because it is painful and she could not hold a knife or the pots and pans. The nephew stated he does most of the cleaning and cooks special meals. He sometimes does the shopping and does the laundry for the whole household ██████████ times weekly. The ASW determined that the Appellant's daughter normally did the cooking and the shopping. The Appellant stated that as a man the nephew could not assist her with bathing, and it was indicated the daughter would also become a provider.

The ASW followed the RTS as a guideline for the services to be authorized. The ASW properly authorized the amount of time needed to complete certain tasks instead of just giving the maximum allowed for such services. A review of the current time and task plan shows the ASW properly prorated some of the IADLs for the Appellant's shared

living arrangement. Based on the reassessment the ASW reduced the time the provider would assist with bathing to [REDACTED] minutes per day and meal preparation was reduced to allow for meal preparation [REDACTED] days per week. (See Exhibit A, pp. 14-15, 22, Exhibit B, p.3 and testimony). The ASW set the level of services authorized at the appropriate levels according to the information she was told by the Appellant and her provider and the policies that require the ASW to determine the needed services via her comprehensive reassessment.

The Department presented credible evidence to show that at the time the Appellant's HHS was reduced, the information provided by Appellant and her provider supported the overall reduction in the Appellant's HHS. The policy quoted above dictates that the needed services are determined by the comprehensive assessment conducted by the adult services specialist. The preponderance of the evidence shows that the ASW properly determined the needed services based upon the information she had at the time of her assessment. Accordingly, the Department's decision must be sustained.

The testimony of the Appellant's husband at the hearing is discounted because of his admission that he has been separated from the Appellant since [REDACTED], that he lives apart from the Appellant, and he does not have an active role in her life. Furthermore, the statements that the provider also does yard work and takes the Appellant to doctor's appointments identify tasks not covered by HHS. (See the policy quoted above, ASM 120).

DECISION AND ORDER

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

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

William D Bond

William D. Bond
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

[REDACTED]
Docket No. 2013-57812 HHS
Decision and Order

WDB/db

cc:

[REDACTED]

***** 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.