

**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.** 2013-60513 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 a request for a hearing filed on behalf of Appellant/Petitioner.

After due notice, a hearing was held on ██████████. ██████████, Appellant's mother and legal guardian, appeared and testified on Appellant's behalf. ██████████, Appeals Review Officer, represented the Department of Community Health. ██████████, registered nurse for the Home Help program, 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 who has been diagnosed by a doctor with cerebral palsy, psychomotor retardation, scoliosis, mental retardation, Crohn's disease, and anemia. Appellant's guardians also report that Appellant has a seizure disorder and is lactose intolerant. (Respondent's Exhibit A, pages 8-9).
2. Appellant's parents are his legal guardians. (Respondent's Exhibit A, page 5; Testimony of Appellant's representative).
3. Appellant has been receiving Expanded Home Help Services (EHHS) through the Department since ██████████. (Respondent's Exhibit A, page 7).
4. Appellant was previously authorized for 233 hours and 1 minute of EHHS per month, with a total monthly care cost of \$ ██████████. (Respondent's

**Docket No. 2013-60513 HHS**  
**Decision and Order**

Exhibit A, pages 39-40).

5. Specifically, Appellant was authorized for assistance with bathing, grooming, dressing, toileting, transferring, eating, mobility, taking medications, housework, laundry, shopping, and meal preparation. (Respondent's Exhibit A, pages 39-40).
6. The EHHS were provided by two care providers: [REDACTED] and [REDACTED]. (Respondent's Exhibit A, pages 39-40).
7. [REDACTED] was approved to provide 33 hours and 6 minutes of services per month. (Respondent's Exhibit A, pages 39-40).
8. She provided 90 minutes of HHS per day, 5 days a week (Monday through Friday). (Respondent's Exhibit A, page 34).<sup>1</sup>
9. [REDACTED] was approved to provide 199 hours and 55 minutes of services per month. (Respondent's Exhibit A, pages 39-40).
10. She provided 6 hours and 30 minutes of services per day Monday through Friday, and 8 hours of services per day Saturday through Sunday. (Respondent's Exhibit A, page 34).
11. In [REDACTED], the Department notified Appellant's guardians that it intended to reduce Appellant's EHHS to 139 hours and 26 minutes per month, with a total monthly care cost of \$ [REDACTED] per month. (Respondent's Exhibit A, page 17).
12. The guardians appealed that reduction and, followed a discussion on or about [REDACTED], the Department and Appellant's representative resolved the appeal. (Respondent's Exhibit A, page 17).
13. Specifically, they agreed to that the previous Expanded Home Help payments of \$ [REDACTED] per month would resume and that another redetermination would take place. (Respondent's Exhibit A, page 17).
14. Appellant's representative also withdrew the previous appeal. (Respondent's Exhibit A, page 18).
15. Monthly payments of \$ [REDACTED] were then reauthorized, with a start date of [REDACTED]. (Respondent's Exhibit A, pages 54-59).
16. Nurse [REDACTED] was assigned to Appellant's case as a result of the hearing negotiation and she got involved in order to assist in outlining the client's

---

<sup>1</sup> [REDACTED] also provides services through another state program. (Respondent's Exhibit A, page 34; Testimony of Appellant's representative).

**Docket No. 2013-60513 HHS**  
**Decision and Order**

specific needs. (Respondent's Exhibit A, page 33).

17. As part of her assignment, Nurse [REDACTED] interviewed Appellant's representative on [REDACTED] and Appellant's case worker, [REDACTED], on [REDACTED]. (Respondent's Exhibit A, page 34).
18. Following her review, Nurse [REDACTED] made a number of recommendations regarding Appellant's EHHS. (Respondent's Exhibit A, pages 35-36).
19. Adult Services Worker (ASW) [REDACTED] also conducted a home visit and assessment in Appellant's home with Appellant, Appellant's representative, and Appellant's care provider on [REDACTED]. (Respondent's Exhibit A, pages 20-21).
20. Following that assessment, ASW [REDACTED] sent a request to the Department's Long Term Care Services Policy Section for EHHS for Appellant. (Respondent's Exhibit A, page 38).
21. On [REDACTED], the Department approved EHHS in the amount of 162 hours and 55 minutes per month, with a total monthly care cost of \$ [REDACTED]. (Respondent's Exhibit A, page 38).
22. Specifically, HHS through [REDACTED] was increased to 59 hours and 7 minutes per month while HHS through [REDACTED] was reduced to 103 hours and 48 minutes per month. (Respondent's Exhibit A, pages 35-36).
23. The times authorized differed significantly from what was recommended by Nurse [REDACTED], with more time than recommended being authorized for some tasks and less time than recommended being authorized for others. (Respondent's Exhibit A, pages 35-37).
24. The new approval was to be effective starting [REDACTED]. (Respondent's Exhibit A, page 38).
25. Appellant's case was transferred to ASW [REDACTED] on [REDACTED]. (Testimony of ASW [REDACTED]).
26. According to ASW [REDACTED], ASW [REDACTED] did not implement the new approval of EHHS prior to the case being transferred and she was unaware of any such approval when she received the case. (Testimony of ASW [REDACTED]).
27. In [REDACTED], Appellant's representative contacted ASW [REDACTED] regarding Appellant's care providers not receiving a check. (Testimony of ASW [REDACTED]).
28. ASW [REDACTED] then issued the checks. In doing so she based the

**Docket No. 2013-60513 HHS  
Decision and Order**

- checks on the most recent approval of EHHS for \$ [REDACTED]. (Testimony of ASW [REDACTED]).
29. Moreover, she did not issue the full amount authorized as [REDACTED] continued to provide 90 minutes of services per day Monday through Friday, which was less time than approved in the new authorization. (Testimony of ASW [REDACTED]).
  30. After Appellant's representative called again, regarding the amount of the checks, and having a conversation with her supervisor, ASW [REDACTED] also sent Appellant written notice regarding a reduction in services. (Respondent's Exhibit A, page 15; Testimony of ASW [REDACTED]).
  31. That Advance Action Notice was mailed on [REDACTED] and it provided that Appellant's HHS would be reduced to \$ [REDACTED] per month. The effective date of the reduction was identified as [REDACTED]. (Respondent's Exhibit A, pages 10-14).
  32. On [REDACTED], the Michigan Administrative Hearing System (MAHS) received the Request for Hearing in this matter. (Respondent's Exhibit A, pages 4-6).

**CONCLUSIONS OF LAW**

**Notice**

As a preliminary matter, this Administrative Law Judge would note that the Department failed to provide proper advance notice of the reduction in services in this case.

The Code of Federal Regulations, Chapter 42 addresses the Appellant's rights with respect to Advance Negative Notice of an agency action:

**§ 431.211 Advance notice.**

The State or local agency must mail a notice at least 10 days before the date of action, except as permitted under §§ 431.213 and 431.214 of this subpart.

**§ 431.213 Exceptions from advance notice.**

The agency may mail a notice not later than the date of action if—

- (a) The agency has factual information confirming the death of a recipient;

**Docket No. 2013-60513 HHS**  
**Decision and Order**

(b) The agency receives a clear written statement signed by a recipient that—

(1) He no longer wishes services; or

(2) Gives information that requires termination or reduction of services and indicates that he understands that this must be the result of supplying that information;

(c) The recipient has been admitted to an institution where he is ineligible under the plan for further services;

(d) The recipient's whereabouts are unknown and the post office returns agency mail directed to him indicating no forwarding address (See § 431.231 (d) of this subpart for procedure if the recipient's whereabouts become known);

(e) The agency establishes the fact that the recipient has been accepted for Medicaid services by another local jurisdiction, State, territory, or commonwealth;

(f) A change in the level of medical care is prescribed by the recipient's physician;

(g) The notice involves an adverse determination made with regard to the preadmission screening requirements of section 1919(e)(7) of the Act; or

(h) The date of action will occur in less than 10 days, in accordance with § 483.12(a)(5)(ii), which provides exceptions to the 30 days notice requirements of § 483.12(a)(5)(i)

**§ 431.214 Notice in cases of probable fraud.**

The agency may shorten the period of advance notice to 5 days before the date of action if—

(a) The agency has facts indicating that action should be taken because of probable fraud by the recipient; and

(b) The facts have been verified, if possible, through secondary sources.

In this case, it is undisputed that the reduction was implemented without any advance notice being provided. Appellant's representative subsequently contacted the Department regarding the amount of payments and it was only then that a written notice

██████████  
**Docket No. 2013-60513 HHS**  
**Decision and Order**

was mailed. That written notice, mailed on ██████████, provided that the reduction was effective ██████████. However, as acknowledged by the Department's witnesses, the reduction had already occurred.

### **Reduction**

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 Expanded Home Help Services, and how such services are assessed.

In part, ASM 101, pages 1-2 of 4, provides:

#### **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.

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.**

**Docket No. 2013-60513 HHS**  
**Decision and Order**

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.

Expanded Home Help Services (EHHS)

Expanded home help services can be authorized for individuals who have severe functional limitations which require such extensive care that the service cost must be approved by the adult services supervisor/local office designee and/or the Department of Community Health.

**Docket No. 2013-60513 HHS  
Decision and Order**

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

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.

**Docket No. 2013-60513 HHS**  
**Decision and Order**

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.

\* \* \*

### **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 it's [sic] completion.**

**Example:** A client needs assistance with cutting up food. The specialist would only pay for the time required to cut the

**Docket No. 2013-60513 HHS**  
**Decision and Order**

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.

In this case, the Department reduced, without proper notice, Appellant's EHHS from 233 hours and 1 minute of EHHS per month, with a total monthly care cost of \$ [REDACTED], to 162 hours and 55 minutes per month, with a total monthly care cost of \$ [REDACTED].

Appellant's guardian disputes that reduction and she bears the ultimate burden of proving by a preponderance of the evidence that the Department erred. However, the Department also bears the burden of production with respect to why the reduction was made.

██████████  
**Docket No. 2013-60513 HHS**  
**Decision and Order**

The only witness to testify regarding the basis for that reduction was Nurse ██████████, who was assigned to Appellant's case as a result of the hearing negotiation. As part of her duties, Nurse ██████████ went through each task with Appellant's representative and, later, with Appellant's case worker. She then recommended times to be authorized for various tasks.

However, her recommendations were not completely followed in implementing the reduction. For example, while Nurse ██████████ recommended that HHS for assistance with toileting through ██████████ be approved in the amount of 43 minutes, 7 days a week, Appellant was only approved for 20 minutes a day, 7 days a week after the reduction was implemented, a difference of over 10 hours per month.

Nurse ██████████ was the only witness for the Department to testify regarding Appellant's needs and she could not explain or justify what was ultimately authorized. Additionally, Appellant's new case worker could not explain the basis for the reduction in services as she was assigned the case after the decision was made.

Unfortunately, given that ASW ██████████ no longer works for ██████████ County DHS and he was not present to explain any discrepancy or justify what was authorized. His notes regarding his assessment with Appellant's representative also do not reflect anything different from Nurse ██████████ findings or any reason not to follow her recommendations.

Moreover, even portions of the new authorization that exceeded Nurse ██████████ recommendations are problematic in that they allocate hours that would not be provided or paid for. It is undisputed that ██████████ only provides 90 minutes of HHS, 5 days a week (Monday through Friday). That is what Appellant's representative reported to both Nurse ██████████ and ASW ██████████, and that is what they both documented. Nevertheless, for some inexplicable reason, the new authorization of EHHS allocates 2 hours and 45 minutes of services through ██████████ each day she works. ██████████ cannot be reimbursed for time she does not work and, as testified to by ASW ██████████, ██████████ has therefore only been paid for 90 minutes a day, 5 days a week. Accordingly, due to a flaw in the authorization itself, Appellant has never even received the full, reduced amount of EHHS that he was authorized for.

With respect to the times worked by the care providers, while not allocated in the exact times actually worked, the previous authorization of services generally worked out to reimburse Appellant's care providers for the hours of HHS they provided.

According to Appellant's representative, the hours worked by the two caregivers should have remained the same as Appellant's needs are unchanged. She also testified that it is difficult to break down into specific minutes what the caregivers do as they simply do what is needed at the time.

Some of the reductions in this case appear to be appropriate given the evidence in the record. For example, Appellant's representative reported that she, and not Appellant's paid caregivers, gives Appellant his medications and therefore the HHS previously

██████████  
**Docket No. 2013-60513 HHS**  
**Decision and Order**

authorized for assistance with that task should be terminated. Similarly, given Appellant's shared living arrangement with other adults, some of his HHS with respect to IADLs should be prorated.<sup>2</sup>

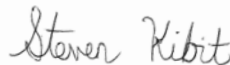
Nevertheless, the reduction must be reversed. The Department failed to provide the required advance notice for the reduction and, in authorizing the reduced services, it failed to follow the recommendations of its own nurse reviewer. That nurse was also the only witness for the Department to testify regarding Appellant's needs and neither she nor anyone else for the Department could explain or justify what was ultimately authorized. That lack of explanation is particularly significant given the credible testimony of Appellant's representative regarding Appellant's continuing needs and the hours worked by his caregivers to meet those needs, in addition to the inexplicable increase in hours for one caregiver beyond what she works and can be paid for. Accordingly, for the reasons discussed above, the Department's decision must be reversed.

**DECISION AND ORDER**

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

**IT IS THEREFORE ORDERED THAT:**

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



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

██████████  
Date Signed: 10/31/2013

Date Mailed: 10/31/2013

<sup>2</sup> It also appears that ██████████ hours needed to be adjusted given the undisputed evidence that she only works 5 days a week while the services she was providing were allocated over 7 days a week. Even if the total amount was correct, the approved time and task sheet should reflect the days she works.

**Docket No. 2013-60513 HHS  
Decision and Order**

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.