

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. 2013-60521 HHS

██████████

██████████

██████████

Appellant.

_____ /

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 sister and care provider, appeared and testified on Appellant's behalf. Appellant also testified on her own behalf, with her representative translating for her. ██████████, Appeals Review Officer, represented the Department of Community Health. ██████████, ██████████ and ██████████ appeared as witnesses for the Department.

ISSUE

Did the Department err in the amount of Home Help Services (HHS) it approved for Appellant?

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 spinal stenosis, diabetes, chronic back pain, arthritis in her knees, and anemia. (Respondent's Exhibit A, pages 5a, 6).
2. On ██████████, Appellant was referred for HHS. (Respondent's Exhibit A, page 5).
3. As part of her application, Appellant submitted a medical needs form signed by her doctor on ██████████. (Respondent's Exhibit A, page 5a).
4. That form indicated that Appellant has a medical need for assistance with the tasks of bathing, grooming, taking medications, housework, shopping, laundry, and meal preparation. (Respondent's Exhibit A, page 5a).
5. On ██████████, ██████████ conducted a visit and assessment in Appellant's home with Appellant and Appellant's provider. (Respondent's

Exhibit A, pages 9, 11).

6. During that visit, Appellant and her provider reported that Appellant is unable to stand, walk, bend or stoop for extended periods of time. (Respondent's Exhibit A, pages 9, 11).
7. On ██████████, the Department sent Appellant a Services and Payment Approval Notice stating that HHS had been approved for ██████ hours and ██████ minutes per month, with a total monthly care cost of ██████. The effective start date for the approval was ██████████. (Respondent's Exhibit A, pages 7-8).
8. Specifically, Appellant was approved for assistance with the tasks of bathing, grooming, dressing, taking medications, housework, laundry, shopping, and meal preparation. (Respondent's Exhibit A, page 10).
9. On ██████████ the Michigan Administrative Hearing System (MAHS) received a complete and signed request for hearing in this matter. In that request, Appellant and her representative assert that the Department did not approve enough hours for the services the representative provides. (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 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 (5-1-2012) (hereinafter "ASM 120") address the issues of what services are included in Home Help Services and how such services are assessed.

For example, 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:

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

•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 HHS 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 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 food and not the full amount of time allotted under the RTS for eating.

ASM 120, pages 2-4 of 5

Here, the Department approved Appellant for ████████ hours and ██████ minutes of HHS per month, with a total monthly care cost of ████████. (Respondent's Exhibit A, pages 7-8). Specifically, Appellant was approved for assistance with the tasks of bathing, grooming, dressing, taking medications, housework, laundry, shopping, and meal preparation. (Respondent's Exhibit A, page 10).

Appellant appealed that approval on the basis that the Department did not approve enough hours for the services Appellant requires and receives from her care provider. (Respondent's Exhibit A, page 4).

While Appellant's representative testified that she does "everything" for Appellant and works approximately ████████ hours per week for Appellant, the only specific tasks encompassed by HHS that were identified by Appellant and her representative as being provided were the same tasks identified by the Department.¹ Accordingly, it is just the times authorized for those tasks that are at issue.

¹ Appellant's representative did testify that she also provides transportation to appointments for Appellant, but transportation is not a covered by HHS.

With respect to the times authorized for each task, Appellant bears the burden of providing by a preponderance of the evidence that the Department erred.

For the reasons discussed below, this Administrative Law Judge finds that Appellant has failed to meet her burden of proof with respect to any of the disputed tasks and the Department's actions must therefore be affirmed.

Bathing

The Department authorized █████ minutes a day, █ days a week (█████ per month) of assistance with bathing based on reports that Appellant needs assistance getting in-and-out of the bathtub, washing her back, and washing her hair. (Respondent's Exhibit A, pages 10, 12; Testimony of █████).

In response, Appellant's representative testified that Appellant cannot wash any part of her body and that it takes over an █████ to bathe her each day. (Testimony of Appellant's representative.

With respect to bathing, Adult Services Manual 121 (11-1-2011) (hereinafter "ASM 121"), pages 1-2 of 4, provides:

Bathing - helping with cleaning the body or parts of the body using a tub, shower or sponge bath; including getting a basin of water, managing faucets, soaping, rinsing and drying. helping shampoo hair.

- 1 No assistance required.
- 2 Bathes self with direction or intermittent monitoring. May need reminding to maintain personal hygiene.
- 3 Minimal hands-on assistance or assistive technology required to carry out task. Generally bathes self but needs some assistance with cleaning hard to reach areas; getting in/out of tub/shower. Client is able to sponge bath but another person must bring water, soap, towel. Client relies on a bath or transfer bench when bathing. The constant presence of another is not required.
- 4 Requires direct hand- on assistance with most aspects of bathing. Would be at risk if left alone.
- 5 Totally dependent on others in all areas of bathing.

Here, Appellant does not have any medical condition that would suggest that she is completely dependent on others for bathing and her representative could not explain why Appellant needs total assistance with bathing. Moreover, this Administrative Law Judge finds ██████████ to be credible with respect to what needs Appellant does have and what needs were reported. Based on those limited needs and reports, the Department properly authorized assistance with bathing ██████████ minutes a day, ██████████ days a week

Grooming

The Department authorized ██████████ minutes a day, ██████████ days a week (██████████ per month) of assistance with grooming based on reports that Appellant needs assistance with her hair and nails. (Respondent's Exhibit A, pages 10, 12; Testimony of ██████████).

In response, Appellant's representative testified that she cuts Appellant's nails approximately every ██████████ days and that she helps Appellant with other grooming every day. She could not estimate how long she spends on grooming each day. (Testimony of Appellant's representative).

With respect to grooming, ASM 121, page 2 of 4, provides:

Grooming - Maintaining personal hygiene and a neat appearance; including the combing/brushing of hair; brushing/cleaning teeth, shaving, fingernail and toenail care.

- 1 No assistance required.
- 2 Grooms self with direction or intermittent monitoring. May need reminding to maintain personal hygiene
- 3 Minimal hands-on assistance required. Grooms self but needs some assistance with activities of personal hygiene.
- 4 Requires direct hands-on assistance with most aspects of grooming. Would be at risk if left alone.
- 5 Totally dependent on others in all areas of grooming.

Given that policy and the lack of dispute regarding what grooming assistance is provided, ██████████ properly ranked Appellant a "3" in grooming and allocated time based on the Department's RTS. (Respondent's Exhibit A, pages 10, 12; Testimony of ██████████). Neither Appellant nor her representative offered any basis for reversing that decision and therefore failed to meet their burden of proof.

Dressing

The Department authorized █████ minutes a day, █ days a week (█████ per month) of assistance with dressing based on reports that Appellant needs assistance dressing after showers. (Respondent's Exhibit A, pages 10, 12; Testimony of Shamoon). The time authorized was greater than that recommended by the RTS used by the Department. (Testimony of Shamoon).

In response, Appellant's representative confirmed that assistance after showers is all that Appellant requires with respect to dressing. She could not, however, estimate how long she it takes or explain why █████ minutes a day is insufficient. (Testimony of Appellant's representative).

In light of the lack of dispute regarding what Appellant needs and the lack of explanation as to why the time authorized for assistance with dressing is insufficient, this Administrative Law Judge finds that Appellant has failed to meet her burden of proving that the Department erred in authorizing dressing assistance and the Department's decision must therefore be affirmed.

Taking Medications

The Department authorized █ minutes a day, █ days a week (█████ per month) of assistance with medications based on reports that Appellant's provider must set up her medications before Appellant takes them. (Respondent's Exhibit A, page 10, Testimony of █████).

In response, Appellant's representative testified that she must set up Appellant's medications █████-a-day. (Testimony of Appellant's representative).

With respect to taking medications, ASM 121, page 3 of 4, provides:

Taking Medication - Taking prescribed and/or over the counter medications

- 1 No assistance required.
- 2 Client is able to take all medications but needs reminding or direction.
- 3 Client is able to take all medication if someone assists in measuring dosages or prepares administration schedule.
- 4 Client is able to take some medication if another person assists in preparation, but needs someone to assist in administering other medications.

- 5 Totally dependent on another. Does not take medication unless someone assists in administering.

Here, given that policy and the lack of dispute regarding what grooming assistance is provided, ██████████ properly ranked Appellant a “3” in taking medications and allocated time based on the Department’s RTS. (Respondent’s Exhibit A, page 12; Testimony of ██████████). Neither Appellant nor her representative offered any basis for reversing that decision.

Laundry

The Department authorized ██████ minutes a day, ██████ days a week (██████ per month) of assistance with laundry based on reports that Appellant cannot stand, walk, bend or stoop for extended periods of time and therefore needs help with her laundry, which is completed ██████ a week. (Respondent’s Exhibit A, page 10; Testimony of ██████████).

In response, Appellant’s representative testified that she does laundry ██████ to ██████ times a week, and that, while Appellant could fold clothes or other things like that, the provider does all of the laundry. (Testimony of Appellant’s representative).

With respect to laundry, ASM 121, page 4 of 4, provides:

Laundry - Gaining access to machines, sorting, manipulating soap containers, reaching into the machine for wet/dry clothing, operating the machine controls, hanging laundry to dry, folding and putting away.

- 1 No assistance required.
- 2 Performs all tasks but needs reminding or direction to do laundry on a regular basis or to do it properly.
- 3 Minimal hand-on assistance required with some task but is able to do most laundry without assistance
- 4 Requires hands-on assistance from another person with most aspects of laundry. Is able to perform some laundry tasks such as folding small clothing items or putting clothes away.
- 5 Totally dependent on another for laundry.

In this case, the authorization for assistance with laundry ██████ days a week is appropriate as it averages out the reports that laundry is completed ██████ to ██████ times a week. Moreover, while Appellant’s provider may do all the laundry, that is by choice and is not necessary given Appellant’s ability to complete some aspects of laundry. Additionally, this Administrative Law Judge would note that the provider can only be

authorized for the time spent on necessary, hands-on assistance with laundry and not the entire time the machines are running. Accordingly, the Department's decision with respect to laundry is proper.

Shopping

The Department authorized █████ minutes a day, █ days a week (████ per month) of assistance with shopping based on reports that shopping is completed █████ or █████ a week and that Appellant needs some assistance with that task as she cannot stand, walk, bend or stoop for extended periods of time. (Respondent's Exhibit A, page 10; Testimony of █████).

In response, Appellant's representative testified that she and Appellant go shopping when necessary and that Appellant is able to pick out what she wants. (Testimony of Appellant's representative).

With respect to shopping, ASM 121, page 4 of 4, provides:

Shopping - Compiling a list, managing cart or basket, identifying items needed, transferring items to home and putting them away, phoning in and picking up prescriptions. Limited to brief, occasional trips in the local area to shop for food, medical necessities and household items required specifically for the health and maintenance of client.

- 1 No assistance required.
- 2 Verbal direction, prompting or reminding is required for shopping.
- 3 Minimal hands-on assistance required for some task (grocery shopping) but client can compile a list and go to nearby store for small items.
- 4 Requires hands-on assistance from another person with most aspects of shopping but client is able to accompany and select needed items.
- 5 Totally dependent on another for shopping.

Given that definition, Appellant should have been ranked a "4" in shopping as she requires hands-on assistance from her provider with most aspects of shopping, but is able to accompany her provider shopping and select needed items. However, Appellant was actually ranked a "5" in this case and therefore received more time than she should have pursuant to the RTS, especially where Appellant's representative could not estimate how much time shopping takes or explain why █████ minutes a day is insufficient. Moreover, the █████ days per week authorized for assistance with shopping is also proper

given ██████████ credible testimony that Appellant and the provider reported that shopping is only done once or twice a week.

Meal Preparation

The Department authorized █████ minutes a day, █████ days a week (██████ per month) of assistance with meal preparation based on reports that Appellant needs meals prepared for her █████ days a week. (Respondent's Exhibit A, pages 10, 12; Testimony of ██████████).

In response, Appellant's representative testified that she prepares all meals for Appellant and leaves them for her. Appellant can then take the meals out and warm them up. (Testimony of Appellant's representative).

With respect to meal preparation, ASM 121, page 4 of 4, provides:

Meal Preparation - Planning menus. Washing, peeling, slicing, opening packages/cans, mixing ingredients, lifting pots/pans, reheating food, cooking, safely operating stove, setting the table, serving the meal. Washing/drying dishes and putting them away.

- 1 No assistance required.
- 2 Verbal direction, prompting or reminding is required for menu planning, meal preparation or clean up.
- 3 Minimal hands-on assistance required for some meals. Client is able to reheat food prepared by another and/or prepare simple meals/snacks.
- 4 Requires another person to prepare most meals and do clean-up.
- 5 Totally dependent on another for meal preparation.

Here, █████ days per week appears appropriate as even Appellant's representative acknowledges that she does not prepare meals every day and, instead, prepares a number of meals at once and leaves them for Appellant to warm up later. Moreover, with respect to Appellant's general needs with respect to meal preparation, she is not totally dependent on others for that task and the Department therefore properly ranked her a "4" in that task, while also allocating time for assistance based on that ranking and the Department's RTS.

Housework

The Department authorized █████ minutes a day, █ days a week (████ per month) of assistance with housework based on reports that Appellant cannot stand, walk, bend or stoop for extended periods of time and therefore needs help cleaning her one-bedroom apartment. (Respondent's Exhibit A, pages 10, 12; Testimony of Shamoon).

In response, Appellant's representative testified that, while she cannot estimate how long she spends cleaning, deep cleaning Appellant's apartment can take over █████ hours. (Testimony of Appellant's representative).

With respect to housework, ASM 121, page 4 of 4, provides:

Light Housecleaning - Sweeping, vacuuming and washing floors; washing kitchen counters and sinks; cleaning the bathroom; changing bed linens; taking out garbage; dusting; cleaning stove top; cleaning refrigerator.

- 1 No assistance required
- 2 Performs all tasks but needs reminding or direction from another.
- 3 Requires minimal assistance from another for some tasks due to limited endurance or limitations in bending, stooping or reaching.
- 4 Requires assistance for most tasks although client is able to perform a few simple tasks alone such as dusting and wiping counters.
- 5 Totally dependent on another for housecleaning.

As provided in the above policy, HHS for assistance with housework is limited to light housekeeping and not the deep cleaning completed by Appellant's representative. Moreover, Appellant does not have any medical condition that would suggest that she is completely dependent on others for light housework and her representative could not explain why Appellant needs total assistance with that task. The Department, on the other hand, properly ranked Appellant a "3" in housework due to her limited endurance and limitations in bending, stooping and standing. Based on that ranking, the Department also properly allocated █████ minutes a day, █ days a week (████ per month) of assistance with housework.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department authorized the proper amount of HHS when approving Appellant's services.

IT IS THEREFORE ORDERED THAT:

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

Steven Kibit

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

Date Signed: [REDACTED]

Date Mailed: 1 [REDACTED]

SK/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.