

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

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**IN THE MATTER OF:**

██████████,

Appellant.

**Docket No.** 2013-61695 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 her own behalf. ██████████, Appellant's sister, and ██████████, a representative from Appellant's care provider agency, also testified as witnesses for Appellant. ██████████, Appeals Review Officer, represented the Department of Community Health. ██████████, Adult Services Worker (ASW); ██████████, ASW; ██████████, Adult Services Supervisor; and ██████████, Adult Services Supervisor; from the ██████████ County DHS-██████████ office appeared as witnesses for the Department.

**ISSUE**

Did the Department properly deny Appellant's request for additional 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 Medicaid beneficiary who has been diagnosed with chronic pain syndrome, lower back pain, and arthritis of the spine. (Respondent's Exhibit A, page 8).
2. Appellant applied for HHS and, on ██████████, ASW ██████████ conducted a visit and assessment in Appellant's home. Both Appellant and a representative from the agency that would be providing Appellant's care were present for that assessment. (Respondent's Exhibit A, page 10).
3. During that visit, ASW ██████████ went through a functional assessment for each task covered by HHS. She subsequently ranked Appellant as a "3" in the tasks of mobility, housework, laundry, and shopping. She also ranked Appellant as a "1" in all other tasks. (Respondent's Exhibit A,

pages 9-10; Testimony of ASW ██████████).

4. Based on that assessment and rankings, ASW ██████████ determined that Appellant should be authorized for assistance with housework, laundry, and shopping. (Respondent's Exhibit A, pages 10, 13; Testimony of ASW ██████████).
5. While Appellant was ranked a "3" in mobility, no assistance was authorized for that task as Appellant's needs are met by her use of a cane and she does not require any actual physical assistance with that task. (Testimony of Appellant; Testimony of ASW ██████████).
6. On ██████████, the Department sent Appellant written notice that she had been approved for 12 hours and 54 minutes of HHS per month, with a total monthly care cost of \$██████████. (Respondent's Exhibit A, pages 6-7, 14).
7. Specifically, assistance was authorized for housework in the amount of 1 hour, 1 day a week (4:18 per month); laundry in the amount of 1 hour, 1 day a week (4:18 per month); and shopping in the amount of 1 hour, 1 day a week (4:18 per month). (Respondent's Exhibit A, page 14).
8. On ██████████, the Michigan Administrative Hearing System (MAHS) received a Request for Hearing from Appellant. In that request, Appellant asserts that she needs help more than one day a week with the tasks of meal preparation, housework, shopping, yard work and bathing. (Respondent's Exhibit A, page 4).
9. After the approval, Appellant's file was assigned to ASW ██████████. (Testimony of ASW ██████████).
10. ASW Herbin plans to complete a follow-up assessment, but no such assessment has been scheduled. (Testimony of ASW ██████████).

### **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 101 101 (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.

*ASM 101, pages 1-2 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*

As described above, while Appellant's application for HHS was approved, she appealed the approval notice on the basis that that more HHS should have been authorized. According to Appellant, the Department failed to authorize assistance for all the tasks she requires help with. She also asserts that, with respect to the tasks it did authorize assistance with, the Department failed to approve a sufficient amount of time.

Each of the disputed tasks will be addressed in turn and the Appellant bears the burden of proving 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 that burden of proof and that the Department's decision must therefore be affirmed.

### **Yard Work and Transportation**

Appellant argues that she requires more HHS because she is completely incapable of completing yard work and because she requires someone to drive her places, such as the doctor's office.

However, as provided in the above policy and testified to by the Department's witnesses, HHS do not cover yard work or transportation.

### **Bathing**

Appellant also argues that she should have been authorized for assistance with bathing as she sometimes needs help getting in-and-out of the bathtub. (Testimony of Appellant).

According to ASW ██████, no assistance with bathing was requested. (Testimony of ASW ██████). Appellant herself does not recall if she discussed such a need during the home visit and assessment. (Testimony of Appellant).

The medical needs form submitted by Appellant's doctor as part of Appellant's application does not indicate a need for any assistance with bathing. (Respondent's Exhibit A, page 12).

This Administrative Law Judge is limited to reviewing the Department's decision in light of the information it had at the time it made its decision. Here, given ASW ██████ credible testimony that no need for bathing assistance was identified by Appellant or her provider during the home visit, in addition to Appellant's doctor's failure to identify any such need on the medical needs form, the Department's decision not to authorize HHS for bathing assistance must be sustained.

### **Meal Preparation**

Appellant argues in her request and testified during the hearing that HHS should also have been authorized for assistance with meal preparation. According to Appellant, while she can use a microwave and do some small things, her sister does most of the meal preparation. (Testimony of Appellant).

According to ASW ██████, no need for assistance with meal preparation was identified during the home visit. (Testimony of ASW ██████). Additionally, the medical needs form submitted by Appellant's doctor as part of Appellant's application does not indicate a need for any assistance with meal preparation. (Respondent's Exhibit A, page 12).

This Administrative Law Judge finds ASW ██████ to be credible with respect to what was reported during the assessment, especially given the medical needs form and Appellant's testimony that she does not recall if she discussed a need for assistance with meal preparation during the home visit. Given the above testimony and evidence, the Department was therefore proper in not authorizing HHS for assistance with meal

preparation. To the extent Appellant has updated information she wants to provide, she is free to re-request the assistance at any time.

### Housework

In the approval notice, Appellant was authorized for assistance with housework in the amount of 1 hour, 1 day a week (4:18 per month). (Respondent's Exhibit A, page 14).

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.

Here, Appellant argues that she requires 5 hours a week for assistance with housework given her difficulties with standing and other parts of housework. In particular, she testified that, while she can do some dusting and cleaning, she cannot vacuum at all. (Testimony of Appellant).

However, ASW ████████ appears to have taken Appellant's reports into account and Appellant's ranking of "3" in housework is consistent with both Appellant's statements and the above definition. Moreover, as provided in ASM 120, the ASW then used the Department's reasonable time schedule (RTS) as a guide and generated an appropriate amount of assistance with *light* housecleaning for one person. (ASM 120, page 3 of 4; Testimony of ASW ████████).

As discussed above, Appellant bears the burden of proving that the Department erred in authorizing assistance with housework. Here, Appellant has failed to meet her burden of proof given the record in this case. The ASW took Appellant's needs and abilities into account and, using the RTS, properly allocated one hour a week for light housecleaning.

## **Shopping**

Appellant was also authorized for shopping assistance in the amount of 1 hour, 1 day a week (4:18 per month). (Respondent's Exhibit A, page 14).

In her request for hearing and testimony, Appellant asserts that more assistance with shopping should be authorized. (Respondent's Exhibit A, page 4; Testimony of Appellant).

However, she also testified that shopping takes 1 hour to 90 minutes each trip, and that she and her provider go shopping 1 to 2 times a month. (Testimony of Appellant).

Accordingly, accepting Appellant's testimony as true, she requires 3 hours of shopping assistance each month at the most and the 4 hours and 18 minutes of shopping assistance actually authorized each month is more than sufficient.

## **Laundry**

Appellant was further authorized for assistance with laundry in the amount of 1 hour, 1 day a week (4:18 per month). (Respondent's Exhibit A, page 14).

According to Appellant, the authorized time is insufficient. (Respondent's Exhibit A, page 4; Testimony of Appellant). Specifically, she testified that she cannot carry loads of laundry up-and-down stairs and that it takes her provider 2 hours each week to do Appellant's laundry. (Testimony of Appellant).

With respect to laundry, ASW 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.

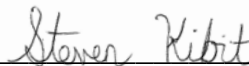
Given the above policy, the Department properly authorized 1 hour of laundry assistance each week. Appellant cannot carry loads of laundry up-and-down stairs, but she is not completely dependent on others for laundry as she is capable of completing some aspects of laundry, such as sorting, folding and putting away clothes. Moreover, Appellant appears to be requesting assistance for the entire time it takes to complete her laundry and not just the time her provider is providing actual physical assistance. However, HHS may only be authorized for direct assistance and laundry assistance does not include times when the laundry machine is running (during which time the provider could be performing other tasks).

**DECISION AND ORDER**

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

**IT IS THEREFORE ORDERED THAT:**

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



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

Date Signed: 10/11/2013

Date Mailed: 10/11/2013

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.