

**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. 2013-63112 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 Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. ██████████, an attorney at ██████████, appeared on Appellant's behalf. Appellant and ██████████, Appellant's care provider, testified as witnesses for Appellant. ██████████, Appeals Review Officer, represented the Department of Community Health. ██████████, Adult Services Worker (ASW), and ██████████, Adult Services Supervisor, from the ██████████ County 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 spondylolisthesis, lower back pain, diabetes, hypertension, depression, and bad feet. (Respondent's Exhibit A, pages 10, 19).
2. Appellant had been receiving HHS through the Department in the amount of 50 hours and 5 minutes per month, with a total care cost of \$ ██████████ per month. (Respondent's Exhibit A, page 21).
3. Specifically, HHS had been authorized for assistance with bathing, grooming, dressing, mobility, taking medications, light housework, laundry, shopping, and meal preparation. (Respondent's Exhibit A, page 21).
4. On ██████████, ASW ██████████ conducted a home visit and reassessment of Appellant's services with Appellant. (Respondent's Exhibit A, page 15).

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5. Appellant lives with his care provider. (Testimony of Appellant; Testimony of ██████████).
6. Given that shared living arrangement, ASW ██████████ never asked Appellant about how his laundry was completed and simply assumed that Appellant's laundry and his care provider's laundry were completed together. (Testimony of ASW ██████████).
7. Following that visit and reassessment, ASW ██████████ decided to reduce Appellant's services. Specifically, she decided to remove assistance with grooming and mobility while also reducing assistance with bathing, dressing, and laundry. (Respondent's Exhibit A, pages 20-21; Testimony of ASW ██████████).
8. ASW ██████████ also mistakenly entered a reduction to Appellant's HHS with respect to housework. She had not intended to make such a reduction. (Respondent's Exhibit A, pages 20-21; Testimony of ASW ██████████).
9. Overall, Appellant's HHS were to be reduced to 27 hours and 8 minutes a month, with a total monthly care cost of \$██████████. (Respondent's Exhibit A, page 20).
10. On ██████████, ASW Helwig sent Appellant written notice that his HHS would be reduced on July 16, 2013 due to his reports that he was independent in grooming and mobility. (Respondent's Exhibit A, pages 6-9).
11. On August 16, 2013, the Michigan Administrative Hearing System (MAHS) received a request for hearing in this matter. (Respondent's Exhibit A, pages 4-5).

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 1-2 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.

* * *

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.

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

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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.

In this case, following a visit and reassessment, the Department reduced Appellant's services. Specifically, assistance with grooming and mobility was removed while assistance with bathing, dressing, laundry, and housework was reduced.

Appellant challenges that reduction and, in doing so, Appellant bears the burden of proving by a preponderance of the evidence that the Department erred in making its decision.

From the reasons discussed below, this Administrative Law Judge finds that Appellant has met that burden of proof and that the Department's actions should be reversed.

As described above, the Department's witness acknowledged that she erred in reducing Appellant's HHS with respect to housework from 14 minutes a day, 3 days a week (3:01 a month), to 35 minutes a day, 1 day a week (2:30 per month). (Respondent's Exhibit A, pages 20-21). According to ASW ██████████, she had not intended to make such a reduction and no such reduction should have made.

Moreover, with respect to assistance with laundry, the Department also erred in reducing Appellant's services from 49 minutes a day, 2 days a week (7:01 per month), to 49 minutes a day, 1 day a week (3:31 per month). (Respondent's Exhibit A, pages 20-21). The Department based the reduction in laundry on its proration policy, which provides that "[a]ssessed 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. See ASM 120, page 4 of 5.

It is undisputed in this case that Appellant lives in a shared living arrangement with another adult, *i.e.* his care provider. However, the above policy also provides that "[i]n 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." See ASM 120, page 4 of 5. Here, Appellant and his care provider both testified that he qualifies for that exception to the proration policy because their laundry must be completed separately due to the fact that the care provider must use specific soaps for her clothes.

Appellant never clearly documented or established during the assessment that his laundry must be completed separate from his care providers. However, he was also never given the opportunity to do so as the task of laundry was never discussed. ASW ██████████ acknowledges that she never asked Appellant or his provider about laundry

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and simply assumed that their laundry was completed together. Given that incomplete assessment, the Department erred in reducing Appellant's HHS with respect to laundry.

Other changes to Appellant's HHS, such as the reductions to bathing and dressing assistance and the removal of grooming assistance, turn on the credibility of Appellant and ASW ██████████ as they testified to significantly different reports being made during the assessment. Given the acknowledged error ASW ██████████ made with respect to housework and the incomplete assessment completed with respect to laundry, this Administrative Law Judge does not find her testimony and notes regarding the home visit to be credible.

In any event, the errors identified above are already sufficient to justify a reversal of the Department's decision to reduce Appellant's services. To the extent the Department wishes to pursue a reduction of Appellant's services in the future, it is always free to initiate a redetermination of Appellant's HHS and, with proper notice, decide to reduce services where appropriate.

However, the decision to reduce serviced before this Administrative Law Judge must be reversed given the clear errors made by the Department in reducing Appellant's HHS.

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 Kibit

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

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***** 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.