

**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. 2013-64310 HHS

██████████

██████████

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 by Appellant.

After due notice, a hearing was held on ██████████, Appellant's daughter and care provider, appeared and testified on Appellant's behalf. Appellant also testified on her own behalf. ██████████, Appeals Review Officer, represented the Department of Community Health. ██████████ Adult Services Worker (ASW), and ██████████, Adult Services Supervisor, from ██████████ 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 left temporal lobe epilepsy. (Respondent's Exhibit A, pages 8a, 9).
2. Appellant has been receiving HHS since ██████████ (Respondent's Exhibit A, page 8).
3. Appellant had been approved for HHS in the amount of ██████ hours and ██████ minutes per month, with a total monthly care cost of ██████████. (Respondent's Exhibit A, page 16a).
4. Specifically, HHS had been authorized for assistance with bathing, grooming, dressing, taking medications, light housework, laundry, shopping, and meal preparation. (Respondent's Exhibit A, page 16a).

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5. On ██████████, ASW ██████████ conducted a home visit and reassessment of Appellant's services. (Respondent's Exhibit A, page 15).
6. The next day, ASW ██████████ and Appellant's daughter/care provider met in the ASW's office. (Respondent's Exhibit A, page 13a).
7. ASW ██████████ subsequently decided to adjust Appellant's services. Assistance with bathing was reduced while assistance with grooming, dressing, taking medications, shopping, and meal preparation was removed. Assistance with housework and laundry remained the same. (Respondent's Exhibit A, pages 7, 16a).
8. Overall, Appellant's HHS would be reduced to ████████ hours and ████████ minutes a month, with a total monthly care cost of ██████████ (Respondent's Exhibit A, page 7).
9. On ██████████ the Department sent Appellant written notice that her HHS would be reduced to ██████████ per month on ██████████ (Respondent's Exhibit A, pages 5-6).
10. On ██████████, the Michigan Administrative Hearing System (MAHS) received a request for hearing in this matter. (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 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 how such services are assessed.

In part, ASM 101, pages 1-3 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.
- Shopping for food and other necessities of daily living.
- Laundry.
- Housework.

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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

Home help services must not be approved for the following:

- Supervising, monitoring, reminding, guiding, teaching or encouraging (functional assessment rank 2).

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

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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.

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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.

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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, following a visit and reassessment, the Department decided to adjust Appellant's services. Assistance with bathing was reduced while assistance with grooming, dressing, taking medications, shopping, and meal preparation was removed. Assistance with housework and laundry remained the same. (Respondent's Exhibit A, pages 7, 16a).

Appellant challenges the overall reduction in services. In general, Appellant and her representative argue that more HHS is necessary because Appellant requires frequent monitoring due to her seizures, which could strike at any time. (Testimony of Appellant; Testimony of Appellant's representative).

However, as expressly described in the above policy, HHS must not be approved for supervising, monitoring, reminding, guiding, teaching or encouraging. See ASM 101, page 3 of 4.

Appellant also appears to challenge the reductions in or terminations of assistance with the specific tasks covered by HHS. Each of the disputed tasks will be discussed below and 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 failed to meet that burden of proof and that the Department's actions should be affirmed.

Bathing

Here, the Department reduced Appellant's assistance with bathing from █████ minutes a day, █ days a week (█████ per month) to █ minutes a day, █ days a week (█████ per month). (Respondent's Exhibit A, pages 16a-17).

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According to ASW ██████████, that reduction was based on reports by Appellant and her provider that Appellant can wash herself and only needs help getting in-and-out of the bathtub. (Respondent's Exhibit A, pages 13a, 15; Testimony of ASW ██████████).

In response, Appellant's representative/provider testified that, in addition to helping Appellant in-and-out of the bathtub, she must also watch Appellant bathe in order to make sure that Appellant does not fall or slip. (Testimony of Appellant's provider).

However, as discussed above, monitoring Appellant while she bathes is not covered by HHS. See ASM 101, page 3 of 4. Additionally, the services covered by HHS, *i.e.* assisting Appellant in-and-out of the bathtub, are sufficiently accounted for in the reduced time. Therefore, the Department properly reduced Appellant's assistance with bathing.

Grooming

With respect to grooming, ASW ██████████ testified and wrote in her notes that, while Appellant was previously authorized for ██████████ minutes a day, ██████████ days a week (██████████ per month) of assistance with grooming, Appellant reported that her provider rarely physically assists her with that task. Instead, the provider takes Appellant to get Appellant's hair and nails done once a month and either Appellant or her provider handles any daily upkeep. (Respondent's Exhibit A, page 15, 16a; Testimony of ASW ██████████).

Neither Appellant nor her representative addressed the task of grooming during the hearing. Moreover, grooming was not identified as an area of need on Appellant's medical needs form (Respondent's Exhibit A, page 8a) and the Department can only pay for necessary services provided by the paid care provider. Accordingly, it properly removed HHS with respect to grooming.

Dressing

Appellant was also previously authorized for assistance with dressing in the amount of ██████████ minutes a day, ██████████ days a week (██████████ per month).

According to ASW ██████████, that assistance had to be removed given the reports of Appellant and her doctor. Specifically, Appellant reported that able to put on clothes herself and has no issues with buttoning. Appellant also reported that she sometimes needs help hooking her bra, but that she tries to purchase clothes that pull over. (Respondent's Exhibit A, page 15; Testimony of ASW ██████████). Appellant's doctor also did not identify a need for assistance with dressing on Appellant's medical needs form. (Respondent's Exhibit A, page 8a).

Given that undisputed evidence, Appellant has failed to meet her burden of proof with respect to the removal of assistance with dressing and the Department's decision must therefore be sustained.

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Taking Medications

Appellant was previously authorized for assistance with taking medications in the amount of █ minutes a day, █ days a week (█ hour a month). (Respondent's Exhibit A, page 16a).

According to ASW █ notes and testimony, Appellant reported that her provider only shops for Appellant's medications and reminds her to take them. (Respondent's Exhibit A, page 15; Testimony of ASW █).

Appellant's representative confirmed that she does remind Appellant to take Appellant's medications, while also testifying that she set up Appellant's medications once a week. (Testimony of Appellant's provider).

However, as stated in the policy quoted above, reminding Appellant to take her medications is not covered by HHS. See ASM 101, page 3 of 4. Moreover, Appellant's doctor did not identify a need for assistance with taking medications on Appellant's medical needs form. (Respondent's Exhibit A, page 8a).

Given the above evidence and policy, Appellant has failed to meet her burden of proof with respect to assistance with medications and the Department properly removed such assistance.

Shopping

Prior to the removal of assistance with shopping, Appellant was receiving █ minutes a day, █ days a week (█ per month) of assistance with that task. (Respondent's Exhibit A, page 16a).

According to ASW █, Appellant reported during the home visit that she goes with her provider to do shopping and is only unable to do it on her own due to a lack of transportation. Appellant also reported that she would do her own shopping if she had a vehicle. (Respondent's Exhibit A, page 15; Testimony of ASW █).

In response, Appellant's representative notes that Appellant's doctor stated on Appellant's medical needs form that she needs assistance with shopping and is prohibited from driving. (Respondent's Exhibit A, page 8a; 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

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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.

That definition of shopping focuses on the task itself and not the need for transportation in getting to stores. Appellant appears to only need transportation, which is not covered by HHS, and the Department therefore properly terminated her assistance with shopping.

Meal Preparation

Appellant was previously authorized for assistance with meal preparation ██████████ minutes a day, ████████ days a week ██████████ per month). (Respondent's Exhibit A, page 16a).

According to ASW ██████████, however, Appellant reported that she will cook occasionally and, when asked if there was any reason she could not prepare her own meals, said there was no such reason. (Respondent's Exhibit A, page 15; Testimony of ASW ██████████).

Appellant's provider, on the other hand, reported and testified that she prepares all of Appellant's meals. (Respondent's Exhibit A, page 13a; Testimony of Appellant's provider).

With respect to meal preparation, ASM 121, page 3 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.

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- 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, while at least some of Appellant's meals are prepared by her daughter/care provider, it appears that their arrangement is by choice and it is not necessary for the provider to prepare meals. Appellant reported to ASW [REDACTED] that Appellant prepares some meals and neither Appellant nor her provider could explain why Appellant cannot prepare all meals or identify a specific medical condition that limits her ability in this task. Accordingly, Appellant has failed to meet her burden of proof and the Department decision with respect to meal preparation must be sustained.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED THAT:

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

Steven Kibit

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

SK/db

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

cc: [REDACTED]

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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.