

**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. 2013-68447 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 request for a hearing filed on behalf of Appellant.

After due notice, an in-person hearing was commenced on ██████████. However, the hearing was not completed as scheduled on that day and had to be continued on ██████████.

Attorney ██████████ appeared on Appellant's behalf. ██████████, Appellant's father and plenary guardian, and ██████████, Appellant's case manager at ██████████, 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 Department of Human Services (DHS) testified 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 an ██████-year-old Medicaid beneficiary who has been diagnosed with Duchenne muscular dystrophy; hypertension; scoliosis; seborrheic dermatitis; flexion contractures; and sleep-related ventilation. (Respondent's Exhibit A, page 11; Respondent Exhibit B, pages 2, 4).

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2. Appellant's father is his plenary guardian. (Respondent's Exhibit A, page 5).
3. Appellant was referred for HHS after he turned █████-years-old and, on █████ ASW █████ conducted a home visit and comprehensive assessment with Appellant and Appellant's father/guardian. (Respondent's Exhibit A, page 9; Respondent's Exhibit B, pages 1-11).
4. During that assessment, Appellant's father/guardian reported that Appellant lives with his parents, █████ adult siblings, and █████ minor sibling. (Respondent's Exhibit A, page 9; Respondent's Exhibit B, page 2).
5. Appellant's father/guardian also reported that Appellant is dependent on others for all Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADLs). (Respondent's Exhibit A, page 9; Respondent's Exhibit B, pages 6-11).
6. ASW █████ and Appellant's father/guardian also discussed Appellant's past and current needs with respect to complex care tasks such as tube feeding, suctioning, a bowel program, and range of motion exercises. (Respondent's Exhibit A, pages 9, 14-18; Respondent's Exhibit B, pages 6-11).
7. Following that assessment, the Department decided to approve HHS in the amount of █████ hours and █████ minutes per month. (Respondent's Exhibit A, page 9).
8. Specifically, HHS were authorized for assistance with bathing, grooming, dressing, toileting, transferring, eating, tube feeding, mobility, taking medications, housework, laundry, shopping, meal preparation, and a bowel program. (Respondent's Exhibit A, pages 19-22).
9. The services were split among four separate home help providers and the assistance with some tasks was prorated due to the fact that Appellant shared a household with other adults. (Respondent's Exhibit A, pages 9, 19-22; Testimony of ASW █████)
10. On █████, the Department sent Appellant written notice that HHS had been approved in the amount of █████ hours and █████ minutes per month. (Respondent's Exhibit A, pages 6-8).
11. The notice also provided that Appellant's HHS had an effective start date of █████. (Respondent's Exhibit A, page 6).
12. On █████, the Michigan Administrative Hearing System (MAHS) received the request for hearing filed on Appellant's behalf in this matter. (Respondent's Exhibit A, pages 4-5).

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13. In that request, Appellant's father/guardian asserted that he disagreed with the amount of services authorized and that Appellant was in need of greater assistance. (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 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 (5-1-2013) (hereinafter "ASM 101") and Adult Services Manual 120 (5-1-2013) (hereinafter "ASM 120") addressed the issues of what services are included in HHS and how such services are assessed at all times applicable to this case.

For example, ASM 101 states in part:

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.**

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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 [sic] 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.

Complex Care

Complex care refers to conditions requiring intervention with special techniques and/or knowledge. These complex care tasks are performed on clients whose diagnoses or conditions require more management. The conditions may also require special treatment and equipment for which specific instructions by a health professional or client may be required in order to perform.

- Eating or feeding assistance.
- Catheters or leg bags.
- Colostomy care.
- Bowel program.
- Suctioning.
- Specialized skin care.
- Range of motion exercises.
- Dialysis (In-home).
- Wound care.
- Respiratory treatment.
- Ventilators.
- Injections.

* * *

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).
- Services provided for the benefit of others.
- Services for which a responsible relative is **able** and **available** to provide (such as house cleaning, laundry or shopping). A responsible relative is defined as an individual's spouse or a parent of an unmarried child under age 18.
- Services provided by another resource at the same time (for example, hospitalization, MI-Choice Waiver).
- Transportation - See Bridges Administrative Manual (BAM) 825 for medical transportation policy and procedures.

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- Money management such as power of attorney or representative payee.
- Home delivered meals.
- Adult or child day care.
- Recreational activities. (For example, accompanying and/or transporting to the movies, sporting events etc.)

Note: The above list is not all inclusive.

ASM 101, pages 1-5

Additionally, ASM 120 provides in part:

The DHS-324, Adult Services Comprehensive Assessment, is the primary tool for determining need for services. The comprehensive assessment must be completed on **all open independent living services cases**. ASCAP, the automated workload management system, provides the format for the comprehensive assessment and all information must be entered on the computer program.

Requirements

Requirements for the comprehensive assessment include, but are not limited to:

- A comprehensive assessment will be completed on all new cases.
- A face-to-face contact is required with the client in his/her place of residence.
- The assessment may also include an interview with the individual who will be providing home help services.
- A new face-to-face assessment is required if there is a request for an increase in services before payment is authorized.
- A face-to-face assessment is required on all transfer-in cases before a payment is authorized.
- The assessment must be updated as often as necessary, but minimally at the six month review and annual

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redetermination.

- A release of information must be obtained when requesting documentation from confidential sources and/or sharing information from the department record.
 - Use the DHS-27, Authorization To Release Information, when requesting client information from another agency.
 - Use the DHS-1555, Authorization to Release Protected Health Information, if requesting additional medical documentation.. [sic] This form is primarily used for APS cases.
- Follow rules of confidentiality when home help cases have companion adult protective services cases; see SRM 131, Confidentiality.

* * *

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/cleanup.
- Shopping for food and other necessities of daily living.
- Laundry.
- 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 [sic] 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.

Complex Care

Complex care refers to conditions requiring intervention with special techniques and/or knowledge. These complex care tasks are performed on clients whose diagnoses or conditions require more management. The conditions may also require special treatment and equipment for which specific instructions by a health professional or client may be required in order to perform.

- Eating or feeding assistance.
- Catheters or leg bags.
- Colostomy care.
- Bowel program.
- Suctioning.
- Specialized skin care.
- Range of motion exercises.
- Dialysis (In-home).
- Wound care.
- Respiratory treatment.
- Ventilators.
- Injections.

When assessing a client with complex care needs, refer to the complex care guidelines on the adult services home page.

Time and Task

The specialist will allocate time for each task assessed a rank of 3 or greater, 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, a rationale **must** be provided.

An assessment of need, at a ranking of 3 or greater, 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 its 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 (IADL) 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.

* * *

Expanded Home Help Services (EHHS)

Expanded home help services exists if all basic home help services eligibility criteria are met and the assessment

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indicates the client's needs are so extensive that the cost of care cannot be met within the monthly maximum payment level of \$549.99.

Michigan Department of Community Health Approvals

When the client's cost of care exceeds \$1299.99 for **any** reason, the adult services specialist must submit a written request for approval to the Michigan Department of Community Health (MDCH).

Follow the **Procedures for Submitting Expanded Home Help Requests** found on the Adult Services Home Page. Submit the request with all required documentation to:

Michigan Department of Community Health
Long Term Care Services Policy Section
Capital Commons Building, 6th Floor
P.O. Box 30479
Lansing, MI 48909

MDCH will provide written documentation (DCH-1785) of approval. A new request **must** be submitted to the Michigan Department of Community Health whenever there is an increase in the cost of care amount. A new request is **not** required if the cost of care decreases below the approved amount set by MDCH.

Note: If an expanded home help case closes and reopens within 90 days and the care cost remains the same, a new MDCH approval is **not** required.

ASM 120, pages 1-5, 6-7

In this case, following a home visit and functional assessment, the Department decided to authorize HHS in the amount of ■ hours and ■ minutes per month. (Respondent's Exhibit A. page 9). Specifically, HHS were authorized for assistance with bathing, grooming, dressing, toileting, transferring, eating, tube feeding, mobility, taking medications, housework, laundry, shopping, meal preparation, and a bowel program. (Respondent's Exhibit A. pages 19-22).

Appellant's guardian and representative challenge the amount of HHS authorized in their request for hearing. In doing so, they assert both that more assistance should have been authorized for help with certain tasks and that services should also have been authorized for assistance with other tasks.

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Each of the disputed tasks will be discussed below. 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 must therefore be affirmed.

Bathing

Appellant was ranked a "5" in bathing and the Department approved █████ minutes per day, █ days per week, of assistance with that task. (Respondent's Exhibit A, pages 12, 20-21). The authorized services were split evenly between █████ of Appellant's providers: █████ and █████. (Respondent's Exhibit A, pages 20-21).

With respect to bathing, Adult Services Manual 121 (5-1-2013) (hereinafter "ASM 121"), page 2 of 6, 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.

Moreover, the reasonable time schedule (RTS) used by the Department as a guide provides that an Appellant with a ranking of "5" in bathing should be authorized █████ minutes per day of assistance with that task. (Testimony of █████).

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According to ASW ██████████, she went above the RTS and authorized ██████████ minutes per day of assistance with bathing, split between ██████████ providers, because it takes ██████████ people to bathe him. (Respondent's Exhibit B, page 8; Testimony of ASW ██████████).

In response, Appellant's father/guardian testified that it takes the ██████████ providers ██████████ minutes each day to bathe Appellant and that Appellant, who is large and difficult to maneuver, requires prescription shampoos and creams while showering. (Testimony of ██████████).

Given that testimony, this Administrative Law Judge finds that Appellant has failed to meet his burden of proof with respect to the task of bathing. It is undisputed that Appellant requires the assistance of ██████████ people for bathing due to his size and medical conditions. However, that need for multiple providers was specifically taken into account by ASW ██████████ and she went above the RTS precisely for that reason. Moreover, even if Appellant does require special shampoos or creams while showering, those prescribed items merely replace regular items and there is no suggestion that they take any additional time to apply. Overall, Appellant's representative and witnesses failed to justify a need for any more time.¹

Grooming

The Department ranked Appellant a "5" in grooming and authorized assistance with that task in the amount of ██████████ minutes a day, ██████████ days a week ██████████ per month). (Respondent's Exhibit A, pages 12, 21). Appellant's father/guardian was identified as the sole home help provider for that task. (Respondent's Exhibit A, page 21).

During the hearing, Appellant's father/guardian testified that the ██████████ minutes per day authorized for assistance with grooming is sufficient. (Testimony of ██████████). Accordingly, the Department's decision with respect to grooming is affirmed.

Dressing

Appellant was also ranked a "5" in dressing and the Department authorized ██████████ minutes a day, ██████████ days a week ██████████ per month), for assistance with that task. (Respondent's Exhibit A, pages 12, 21). Appellant's father/guardian was identified as the home help provider for that task. (Respondent's Exhibit A, page 21).

¹ Appellant's representative and witness/guardian also appear to seek specialized skin care for Appellant due to the fact that Appellant's providers must apply prescription shampoos and creams while Appellant is showering. (Testimony of ██████████). However, as it appears that such assistance is already covered by the assistance authorized for bathing, the Department properly denied that request as well.

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With respect to dressing, ASM 121, page 3 of 6, states:

Dressing - Putting on and taking off garments; fastening and unfastening garments/undergarments, assisting with special devices such as back or leg braces, elastic stockings/garments and artificial limbs or splints.

- 1 No assistance required.
- 2 Client is able to dress self but requires reminding or direction in clothing selection.
- 3 Minimal hands-on assistance or assistive technology required. Client unable to dress self completely (i.e. tying shoes, zipping, buttoning) without the help of another person or assistive device.
- 4 Requires direct hands on assistance with most aspects of dressing. Without assistance would be inappropriately or inadequately dressed.
- 5 Totally dependent on others in all areas of dressing.

Moreover, the RTS used by the Department as a guide provides that a client with a ranking of “5” in dressing should be authorized █ minutes per day of assistance with that task. (Testimony of █).

Here, while ASW █ noted that Appellant requires █ people to help him dress (Respondent’s Exhibit B, page 8), only Appellant’s father was identified as a home help provider for that task (Respondent’s Exhibit A, page 21). Nevertheless, ASW █ still accounted for Appellant’s needs and doubled the amount of time indicated by the RTS due to the fact that █ providers are necessary. (Testimony of █).

In response, Appellant’s father/guardian testified that it takes █ minutes to dress Appellant each time and that he is changed █ times a day. (Testimony of █). However, Appellant’s father/guardian did not elaborate on why Appellant needs to be fully changed █ times a day and the time he identified for each dressing appears to be excessive. Appellant may be difficult to maneuver and it may take █ people to assist him with dressing, but those circumstances were already accounted for by the Department. Appellant has therefore failed to meet his burden of proof with respect to dressing and the Department’s decision must be sustained.

Toileting and Bowel Program

Appellant, who is ranked a “5” in continence, receives HHS for assistance with both toileting and a bowel program. (Respondent’s Exhibit A, pages 12, 21-22). Those █ tasks are related and, as provided in the Department’s ASCAP system, bowel program

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hours may replace some or all of the toileting hours from the regular RTS. (Respondent's Exhibit A, page 16; Testimony of ██████████).

Moreover, ASM 121, page 1 of 6, defines toileting as follows:

Toileting - helping on/off the toilet, commode or bedpan; emptying commode, bed pan or urinal, managing clothing, wiping and cleaning body after toileting, cleaning ostomy and/or catheter tubes/receptacles, applying diapers and disposable pads. May also include catheter, ostomy or bowel programs.

- 1 No assistance required.
- 2 Verbal direction, prompting or reminding is required.
- 3 Minimal hands-on assistance or assistive technology needed with some activities. The constant presence of another person while toileting is not necessary.
- 4 The client does not carry out most activities without human assistance.
- 5 Totally dependent on others in all areas of toileting.

Here, with respect to toileting specifically, Appellant was ranked a "5" and the Department authorized ██████████ minutes a day, ██████████ days a week ██████████ per month), for assistance with that task. (Respondent's Exhibit A, pages 12, 19-21). The authorized services were split between three of Appellant's providers: ██████████ and ██████████ (Respondent's Exhibit A, pages 19-21). That amount of time is also double the amount identified for a person with a ranking of "5" in the RTS used by the Department. (Testimony of ██████████).

With respect to a his bowel program, the Department authorized ██████████ minutes a day, ██████████ days a week ██████████ per month) of assistance. (Respondent's Exhibit A, page 21). The assistance with a bowel program is provided solely by ██████████ (Respondent's Exhibit A, page 21).

In making those approvals, ASW ██████████ testified and noted that Appellant uses incontinence products, a bed pan and a commode. (Respondent's Exhibit A, pages 12-13; Respondent's Exhibit B, pages 8, 11). She also testified and noted that Appellant will sometimes be helped onto the toilet if he communicates a need and that it takes ██████████ people to assist him at those times. (Respondent's Exhibit A, pages 12-13). Regarding a bowel program, she also testified and noted that Appellant started using suppositories on ██████████ and that his provider will give them to Appellant rectally each night, in addition to Miralax ██████████ times a day. (Respondent's Exhibit A, pages 12-13, 16; Respondent's Exhibit B, pages 4, 9-10).

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According to Appellant's father, Appellant wears a diaper during the day, but he is able to ask for assistance when he is passing urine and therefore he only needs to be monitored for most of the day. (Testimony of ██████████ Appellant's father also testified that Appellant does wear a diaper at night after his father performs the bowel program, and that it takes █████ minutes each night for the suppository insertion and █████ people █████ minutes each morning to clean up Appellant's paste and stool. (Testimony of ██████████)).

Given the above testimony and documentation, the undersigned Administrative Law Judge finds that Appellant has failed to meet his burden of proving by a preponderance of the evidence that he needs more time for assistance with toileting or his bowel program. Appellant's needs are undisputed and the Department already doubled the RTS for toileting in this case, in addition to approving assistance with a bowel program. Moreover, Appellant's request for █████ minutes per day for █████ people to clean up Appellant in the morning appears excessive given that Appellant sleeps in a diaper and was previously cleaned up after his bowel movement at night. Additionally, as provided in the above policy, any monitoring of Appellant's urine throughout the day is not covered by the Home Help Program

Transferring

Appellant was ranked a "5" in transferring and the Department authorized 10 minutes a day, █████ days a week (██████ per month), for assistance with that task. (Respondent's Exhibit A, pages 12, 20-21). The authorized services were split evenly between █████ of Appellant's providers: ██████████ and ██████████. (Respondent's Exhibit A, pages 20-21).

With respect to taking medications, ASM 121, page 3 of 6, states:

Transferring - Moving from one sitting or lying position to another. Assistance from the bed or wheelchair to the sofa, coming to a standing position and/or repositioning to prevent skin breakdown.

- 1 No assistance required.
- 2 Client is able to transfer but requires encouragement or direction.
- 3 Minimal hands-on assistance needed from another person for routine boosts or positioning. Client unable to routinely transfer without the help of another or assistive technology such as a lift chair.
- 4 Requires direct hands-on assistance with most aspects of transferring. Would be at risk if unassisted.

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- 5 Totally dependent on others for all transfers. Must be lifted or mechanically transferred.

Here, while the RTS provides that █ minutes a day of assistance are appropriate for a client with a ranking of “5” in transferring, ASW █ testified and noted that she went above the RTS because it takes two people to transfer Appellant. (Respondent’s Exhibit B, page 8; Testimony of ASW █; Testimony of █)

In response, Appellant’s father testified that the time authorized for assistance with transferring is insufficient as Appellant is transferred by █ people █ to █ times a day and it takes █ to █ minutes to transfer Appellant each time. (Testimony of █). Appellant’s father also testified that the daily transfers include transfers from the bed to the wheelchair to the shower chair and back, in addition to occasional transfers to the toilet or commode. (Testimony of █)

However, any transfers involving showering or toileting are covered by the assistance authorized for those tasks. Moreover, with respect to the assistance that is covered by transferring, the Department has accounted for Appellant’s needs, including his need to have █ people assist him, and Appellant has failed to demonstrate a need for additional time. Therefore, the Department’s decision for that task must be affirmed.

Tube Feeding

Appellant is tube fed and receives HHS for assistance with that complex care task in the amount of █ minutes a day, █ days a week (█ per month). (Respondent’s Exhibit A, pages 9, 19, 22). The authorized services were split evenly between two of Appellant’s providers: █ and █. (Respondent’s Exhibit A, pages 19, 22).

According to ASW █, she based the authorization of time on Appellant’s father’s reports that Appellant is tube fed containers of Fibersource by his mother or sister █ times a day, usually overnight, and that Appellant’s mother or sister also monitor the fluids going in-and-out. (Respondent’s Exhibit A, page 14; Respondent’s Exhibit B, page █; Testimony of ASW █). ASW █ also testified that she consulted with a nurse within DHS and was told that the tube feeding itself simply involves mixing the material and attaching it to the tube. (Testimony of █)

Appellant’s father’s testimony does not contradict those findings, but he did testify that it takes Appellant’s providers █ periods of █ to █ minutes each to tube feed Appellant. (Testimony of █). According to Appellant’s representative, those time periods includes filling the bag, connecting the equipment, and monitoring the output. (Testimony of █).

However, as described in the above policy, supervising or monitoring Appellant during the tube feeding is not covered by the Home Help Program. See ASM 101, page 4 of 5. Moreover, Appellant’s representative and witnesses have failed to show that he requires any additional time for the tube feeding assistance that is covered.

Meal Preparation

In addition to be tube fed, Appellant also eats solid foods that are prepared for him. (Respondent's Exhibit A, page 9). Moreover, with respect to the task of meal preparation, Appellant was ranked a "5" and the Department authorized █ minutes a day, █ days a week (██████ per month), for assistance with that task. (Respondent's Exhibit A, pages 13, 19, 22). The authorized services were split evenly between █ of Appellant's providers: ██████████ and ██████████. (Respondent's Exhibit A, pages 19, 22).

Regarding meal preparation, ASM 121, page 5 of 6 states:

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, pursuant to that definition and the policy quoted above, ASW ██████ approved services due to Appellant's total dependence and the assistance he receives from █ providers. (Respondent's Exhibit A, page 13; Testimony of ASW ██████). ASW ██████ also testified that she authorized the most services she could among the two providers, but that she did prorate Appellant's assistance with meal preparation by ██████ because Appellant lives in a shared household with other adults. (Respondent's Exhibit A, page 13; Testimony of ASW ██████).

In response, Appellant's father testified that Appellant's mother and daughter prepare meals solely for Appellant █ times a day and that it takes █ minutes each time. (Testimony of ██████). Appellant's father also testified that Appellant eats his meals separately because he is on a special diet, requests certain foods, and his food must be fresh. (Testimony of ██████).

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As discussed above, IADLs need not be prorated where it can be clearly documented that IADLs for the eligible client are completed separately from others in the home. See ASM 120, page 5 of 7. Moreover, preparing meals separately because of special dietary needs is a specific example given in policy for circumstances where an IADL need not be prorated. See ASM 120, page 5 of 7. However, there has been no such showing in this case. Despite Appellant's father's claims, there has been no clear showing that Appellant has any special dietary needs separate from the rest of his family or that his meals need to be prepared separately. Without such a showing, the Department properly prorated Appellant's services by ██████████ and its decision with respect to meal preparation must be affirmed.

Eating

The Department also ranked Appellant a "5" in eating the meals that are prepared for him and authorized ██████ minutes per day, ██████ days a week (██████ per month) of assistance for that task. (Respondent's Exhibit A, pages 13, 19, 22). The authorized services were again split evenly between ██████ of Appellant's providers: ██████████ and ██████████. (Respondent's Exhibit A, pages 19, 22).

Regarding eating, ASM 121, page 1 of 6 states

Eating - helping with the use of utensils, cup/glass, getting food/drink to mouth, cutting up/manipulating food on plate, swallowing foods and liquids, cleaning face and hands after a meal.

- 1 No assistance required.
- 2 Verbal assistance or prompting required. Client must be prompted or reminded to eat.
- 3 Minimal hands-on assistance or assistive technology needed. Help with cutting up food or pushing food within reach; help with applying assistive devices. The constant presence of another person is not required.
- 4 Moderate hands-on assistance required. Client has some ability to feed self but is unable to hold utensils, cup, glass and requires the constant presence of another person while eating.
- 5 Totally dependent on others in all areas of eating.

In this case, ASW ██████ testified that she ranked Appellant a "5" because he is totally dependent on others in all areas of eating. (Testimony of ASW ██████). In particular, she noted that Appellant has to have his food cut up and fed to him by his mother or sister, and that his illness makes it difficult for him to swallow. (Respondent's Exhibit A,

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pages 9, 13; Testimony of ██████████). ASW ██████████ also testified that she used the RTS in calculating those hours, but, as testified to by ARO ██████████, the RTS actually identifies ██████████ minutes a day of assistance with eating as appropriate for a client with a ranking of "5" and ASW ██████████ inadvertently authorized more time than she intended. (Testimony of ASW ██████████; Testimony of ██████████).

Even with that error, Appellant's representative and father both assert that the time authorized is still insufficient. In particular, Appellant's father testified that it takes ██████████ to ██████████ minutes to feed Appellant a meal and that he is fed ██████████ to ██████████ times a day. (Testimony of ██████████ Appellant's father also testified that Appellant must be fed slowly. (Testimony of ██████████

However, while the undersigned Administrative Law Judge appreciates that Appellant must be fed slowly, the times when the provider is monitoring Appellant's swallowing are not covered by the Home Help Program, see ASM 101, page 4 of 5, and Appellant offers no basis for additional time other than a need to go slowly and monitor Appellant's swallowing. Appellant therefore failed to meet his burden of proving that the Department erred and its decision is sustained.

Suctioning

Both Appellant's representative and father also argue that Appellant should have been authorized HHS for assistance for suctioning. Suctioning is a complex care task covered by the Home Help Program (ASM 101, page 3 of 5), though the Department's ASCAP system does note that assistance with suctioning may replace some or all of eating hours from the regular RTS (Respondent's Exhibit A, page 17).

ASW ██████████ noted following the assessment and testified to during the hearing, that suctioning assistance was denied because Appellant's father only reported that, while he constantly monitors Appellant for suctioning needs, he only suctions him infrequently. (Respondent's Exhibit A, pages 9, 11, 17; Testimony of ASW ██████████. ASW ██████████ also recorded that, while Appellant's suctioning needs had been much greater in the past, he now has new medications, is much improved, and Appellant's father could not identify the frequency of when he does suction Appellant. (Respondent's Exhibit A, pages 9, 17; Respondent's Exhibit B, page 11; Testimony of ASW ██████████.

In response, Appellant's father testified that, while he cannot predict how often or how long it will take, he still suctions Appellant every single day. (Testimony of ██████████ He also testified that the suctioning can take anywhere from ██████████ minutes to an ██████████ each time. (Testimony of ██████████).

Here, the undersigned Administrative Law Judge finds ASW ██████████ is to be credible with respect to what she reported regarding suctioning, especially given her thorough notes and the strong possibility that Appellant's father is confusing Appellant's needs at the time of the assessment with his current needs months later. To the extent Appellant's father has additional or updated information to provide, he can always request more

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HHS. With respect to the decision at issue in this case, however, the Department's denial of assistance with suctioning must be sustained given the information available at the time.

Mobility

Appellant was also ranked a "4" in mobility, but the Department did not authorize any HHS for that task because he is able to use his wheelchair in his own. (Respondent's Exhibit A, page 12; Respondent's Exhibit B, page 9; Testimony of ASW ██████████).

In response, Appellant's father testified that Appellant is totally dependent on others in the area of mobility and cannot even open doors or get into a van on his own. (Testimony of ██████████).

With respect to mobility, ASM 121, page 4 of 6, states:

Mobility - Walking or moving around inside the living area, changing locations in a room, assistance with stairs or maneuvering around pets, or obstacles including uneven floors.

- 1 No assistance required even though the client may experience some difficulty or discomfort. Completion of the task poses no risk to safety.
- 2 Client is able to move independently with only reminding or encouragement. For example, needs reminding to lock a brace, unlock a wheelchair or to use a cane.
- 3 Minimal hands-on assistance required for specific maneuvers with a wheelchair, negotiating stairs or moving on certain surfaces. Without the use of a walker or pronged cane, client would need physical assistance.
- 4 Requires hands-on assistance from another person with most aspects of mobility. Would be at risk if unassisted.
- 5 Totally dependent on other for all mobility. Must be carried, lifted or pushed in a wheelchair or gurney at all times.

Given that definition and the policy quoted above, the Department's decision not to authorize any HHS for assistance with mobility is affirmed. Assistance with mobility is

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only approved for mobility needs within the client's living area and not for assistance outside of the home, such as getting into a van or other vehicle. In this case, it is undisputed that Appellant can, through the manipulation of a joystick, operate his wheelchair independently. Appellant's witnesses also failed to describe any assistance with mobility provided inside the home.

Range of Motion

Both Appellant's representative and father further argue that Appellant should have been authorized assistance for range of motion exercises. Specifically, Appellant's father testified that he discussed Appellant's need for such exercises with ASW ██████████ and that he sometimes has to exercise Appellant's limbs or perform supportive treatments up to █ times a night, with each time taking █ minutes. (Testimony of ██████████ ██████████)

Range of motion exercises can be a complex care task covered by HHS (ASM 101, page 3 of 5) and ASW ██████████ notes and testimony confirm that Appellant's father reported that he exercises, stretches and massages Appellant's limbs. (Respondent's Exhibit A, pages 9, 18). She also noted that Appellant wears hand and leg splints to prevent contractures. (Respondent's Exhibit B, pages 8, 18).

However, ASW ██████████ further testified that she declined to authorize HHS for range of motion exercises without doctor's orders verifying the need for such assistance. (Testimony of ASW ██████████). Appellant's father did not present such documentation during the initial assessment. (Testimony of ASW ██████████). Nor was any such evidence submitted during the hearing itself. Accordingly, Appellant has failed to meet his burden of proof with respect to range of motion exercises and the Department's decision with respect to that task must be affirmed.

Taking Medications

Appellant was ranked a "5" in taking medications and the Department authorized █ minutes a day, █ days a week (██████████ per month), for assistance with that task. (Respondent's Exhibit A, pages 13, 21-22). The authorized services were split evenly between █ of Appellant's providers: ██████████ and ██████████. (Respondent's Exhibit A, pages 21-22).

With respect to taking medications, ASM 121, page 4 of 6, states:

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.

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- 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, while the RTS used by the Department as a guide provides that a client with a ranking of “5” in taking medications should be authorized █ minutes per day of assistance with that task (Testimony of █, ASW █ testified that she went above the RTS in this case in order to give time for crushing and mixing Appellant’s medications. (Testimony of █). Specifically, ASW █ noted that, while Appellant takes most of his medications orally in pill form, some pills are grounded up, mixed with water, and administered through a feeding tube once or twice a day. (Respondent’s Exhibit A, page 13; Respondent’s Exhibit B, pages 6-7).

Appellant’s father testified in response that, rather than the █ minutes per day authorized by the Department, the care providers actually assist Appellant in taking medications █ times a day for a total of █ minutes per day. (Testimony of █).

However, Appellant’s father failed to report any additional or different needs than those noted by ASW █. Similarly, even if the entire process of assisting Appellant with taking his medications takes longer than █ minutes per day, due to a need to monitor him after administering it, monitoring and supervising are not covered by HHS. See ASM 101, page 4 of 5. The Department has authorized a significant amount of HHS for assistance with medications and Appellant has failed to meet his burden of demonstrating that he needs more.

Housework

Appellant was also ranked a “5” in housework and the Department authorized █ minutes a day, █ days a week (█ per month), for assistance with that task. (Respondent’s Exhibit A, pages 13, 19, 22). The authorized services were split evenly between █ of Appellant’s providers: █ and █. (Respondent’s Exhibit A, pages 19, 22).

According to ASW █, given Appellant’s ranking and total dependence, she wanted to approve the maximum number of hours allowed by policy, which would normally be █ hours per month. (Testimony of ASW █; ASM 120, page 6 of 7). However, she also testified and noted that, due to fact that Appellant lived in a shared household with other adults, she had to prorate Appellant’s assistance with housework by █. (Respondent’s Exhibit A, page 9; Testimony of ASW █ Accordingly, the

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Department authorized █ hours of assistance with housework per month. (Respondent's Exhibit A, pages 19, 22).

Here, while Appellant's representative and witness do not dispute that Appellant lives in a shared household with other adults, they do argue that Appellant needs more time for assistance with housework and that his HHS should not have been prorated. In particular, Appellant's father testified that it takes one person █ minutes every day to clean Appellant's room because Appellant is allergic to dust and Appellant has to have his sheets changed every day. (Testimony of Appellant's representative).

However, regardless of how long a task takes, policy requires that assistance with IADLs be prorated by one-half where other adults reside in the client's household. Moreover, while IADLs need not be prorated where it can be clearly documented that IADLs for the eligible client are completed separately from others in the home, there has been no such showing in this case. To the contrary, most of the light housework was not discussed and Appellant's father testified that, due to a need to monitor and assist Appellant through the night, he shares a room with Appellant.

Given the above circumstances, the ASW properly applied the proration policy in this case and only authorized one-half of the maximum amount of HHS for assistance with housework allowed by policy.

Laundry

Appellant was also ranked a "5" in laundry and the Department authorized █ minutes a day, █ days a week (█ per month), for assistance with that task. (Respondent's Exhibit A, pages 13, 19, 22). The authorized services were split evenly between two of Appellant's providers: ██████████ and ██████████. (Respondent's Exhibit A, pages 19, 22).

In allocating that time, ASW █ testified and wrote in her notes that Appellant required the maximum number of hours authorized by policy and that, while he lives in a shared household with other adults, the Department did not need to prorate his assistance with laundry because of Appellant's incontinence and the need to wash his sheets more often. (Respondent's Exhibit A, page 9; Testimony of █).

Appellant's father testified in response that it takes █ minutes every day to complete Appellant's laundry due to his sheets and trousers being soiled every day. (Testimony of Appellant's representative).

However, even if Appellant's father's testimony is true, Appellant is already receiving the maximum amount allowed by policy for assistance with laundry. See ASM 120, page 5 of 7. Accordingly, Appellant cannot receive any more HHS with respect to laundry and the Department's decision must be affirmed.

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Shopping

Appellant was ranked a “5” in shopping and the Department authorized █████ minutes a day, █ day a week █████ per month), for assistance with that task. (Respondent’s Exhibit A, pages 13, 21). Appellant’s father/guardian was identified as the home help provider for that task. (Respondent’s Exhibit A, page 21).

According to ASW █████, given Appellant’s ranking and total dependence, she wanted to approve the maximum number of hours allowed by policy. (Testimony of ASW █████). She also testified that, given the fact that Appellant lives in a shared household with other adults, she had to prorate Appellant’s assistance with shopping by █████ and therefore only authorized █ hours and █████ minutes per month. (Testimony of ASW █████).

In response, Appellant’s father/provider disputes the need to prorate services and testified that, in addition to the regular shopping he must do, he also has to make special trips to the store for Appellant’s medicines because of the schedule of Appellant’s prescriptions. Those additional trips must be made █ to █ times a █████ and can take over █████ minutes each time. (Testimony of Appellant’s representative).

Even if Appellant’s assistance was not prorated per policy, he would still not receive the amount of time sought by his father/provider as policy clearly limits assistance with shopping to a maximum of █ hours per month. See ASM 120, page 5 of 7.

Moreover, it also appears that ASW █████ properly prorated Appellant’s assistance in this case. The above policy does provide that hours for assistance with IADLs such as shopping need not be prorated if it can be clearly documented that the assistance for Appellant is completed separately from others in the home. See ASM 120, page 5 of 7. However, in this case, there is no such clear documentation. Appellant’s father claims that he has to make numerous additional trips solely for Appellant’s prescriptions, but there was no demonstration of such a need and ASW █████ credibly testified that Appellant’s father failed to indicate such a need during the initial assessment.

As discussed above, the burden is on Appellant to prove by a preponderance of the evidence that the Department erred in denying a request for additional assistance with shopping. Based on the evidence presented in this case, Appellant and has failed to meet that burden. Even considering Appellant’s provider has to shop for all of Appellant’s food, medical necessities and household items, there is no clear showing that the assistance is provided separate from shopping for others in the home. Therefore, Appellant’s HHS with respect to shopping were properly prorated by █████ and the Department properly authorize half of the maximum allowed by policy, *i.e.* █ hours and █████ minutes per month.

Transportation

Both Appellant’s father and ASW █████ testified that Appellant’s father reported during the functional assessment that Appellant is completely dependent on others for

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transportation and that he was seeking HHS for such assistance. (Testimony of ██████████
██████████; Testimony of ██████████). However, as clearly provided in the above policy,
transportation is not covered by Home Help Program. See ASM 101, page 4 of 5.²

DECISION AND ORDER

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

Date Signed: ██████████

Date Mailed: ██████████

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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.

² While not through the Home Help Program, medical transportation can be a Medicaid-covered service. See Bridges Administrative Manual (BAM) 825. Therefore, while outside of the scope of this hearing, this Administrative Law Judge would encourage Appellant to seek such transportation through his Medicaid worker, if appropriate.