

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. 2013-69105 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 Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. Appellant appeared and testified on his own behalf. ██████████ Case Manager at the home help agency providing Appellant's care, also testified as a witness for Appellant. ██████████ 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 congestive heart failure, cardiomyopathy, hypertension, sleep apnea, depression, chronic liver disease, gait disturbance, and left leg mononeuritis. Appellant also uses a pacemaker and underwent back surgery in the past. (Respondent's Exhibit A, page 11).
2. Appellant had been receiving HHS through the Department in the amount of ██████ hours and ██████ minutes per month, with a total care cost of ██████ per month. (Respondent's Exhibit A, page 14).
3. Specifically, HHS had been authorized for assistance with housework, laundry, shopping, and meal preparation. (Respondent's Exhibit A, page 14).

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4. On ██████████ ASW ██████████ conducted a home visit and reassessment of Appellant's services with Appellant and Appellant's provider. (Respondent's Exhibit A, page 9).
5. During that visit and reassessment, Appellant reported that he was now living in a shared household with another adult. (Respondent's Exhibit A, page 9; Testimony of Appellant).
6. Appellant also reported that he needed assistance with bathing, getting in-and-out of the bathtub ██████████ a week, and dressing, putting his shoes on ██████████ times a week. (Respondent's Exhibit A, page 9; Testimony of Appellant).
7. ASW J ██████████ subsequently decided to adjust Appellant's services. Specifically, he decided to add assistance with bathing and dressing; increase assistance with meal preparation; and reduce assistance with housework, laundry and shopping. (Respondent's Exhibit A, pages 14-15).
8. Overall, Appellant's HHS were to be reduced to ██████████ hours and ██████████ minutes a month, with a total monthly care cost of ██████████. (Respondent's Exhibit A, page 15).
9. On ██████████ ASW J ██████████ sent Appellant written notice that his HHS would be reduced on ██████████ (Respondent's Exhibit A, pages 6-9).
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.

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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.
- Shopping for food and other necessities of daily living.

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- 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.

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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 adjusted Appellant's services. Specifically, it added assistance with bathing and dressing; increased assistance with meal preparation; and reduced assistance with housework, laundry and shopping.

Appellant challenges those changes, both by asserting that (1) he should have been authorized more time for bathing and dressing, and (2) his assistance with housework, laundry and shopping should not have been reduced.

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 not met that burden of proof and that the Department's actions should be affirmed.

Bathing/Dressing

The Department authorized █ minutes a day, █ days a week (█ per month) of assistance with bathing based on reports that Appellant needs assistance getting in-and-out of the bathtub █ a week. (Respondent's Exhibit A, page 9; Testimony of ASW █).

The Department also authorized █ minutes a day, █ days a week (█ per month) of assistance with dressing based on reports that Appellant needs assistance putting on his shoes █ times a week. (Respondent's Exhibit A, page 9; Testimony of ASW █).

Appellant's testimony confirms that those are the needs he reported to ASW █ regarding bathing and dressing. (Testimony of Appellant). Appellant also testified, however, that he has gotten worse since the assessment and that he now needs more assistance with bathing and dressing. (Testimony of Appellant).

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This Administrative Law Judge is limited to reviewing the Department's decision in light of the information available at the time it made that decision. In this case, it is undisputed that, based on Appellant's reports, the Department properly authorized the requested assistance with bathing and dressing. Accordingly, the Department's decision at issue in this appeal must be affirmed. To the extent Appellant's medical conditions have worsened or he has new information to provide, those issues are outside of the scope of this hearing. Appellant remains free to request additional services through the Home Help Program.

Housework/Laundry/Shopping

In this case, the Department reduced Appellant's assistance with housework from █ hour and █ minutes per day, █ day a week (█ per month) to █ minutes a day, █ days a week (█ per month); Appellant's assistance with laundry from █ hour and █ minutes a day, █ day a week (█) to █ minutes a day, █ days a week (█ per month); and Appellant's assistance with shopping from █ hour a day, █ day a week (█ per month) to █ minutes a day, █ days a week (█ per month). (Respondent's Exhibit A, pages 14-15).

With respect to those reductions, ASW █ testified that he increased the days per week of services based on Appellant's reports while reducing the minutes per day of services based on the reasonable time schedule (RTS) for Appellant's rankings and the Department's proration policy. (Testimony of ASW █).

According to Appellant and his witness, Appellant's needs have remained the same in those areas and his HHS should not have been reduced. (Testimony of Appellant; Testimony of █). Neither Appellant nor his representative, however, disputed the rankings found by ASW █ during the home visit or identified any other needs in those areas.

Moreover, given that Appellant now lives with another adult, ASW █ properly reduced the services that would be authorized in half pursuant to the Department's proration policy. As described above, that policy states 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.

Given that proper proration of services, in addition to the lack of evidence contradicting Appellant's rankings in housework, laundry and shopping or the application of the RTS, this Administrative Law Judge finds that Appellant has failed to meet his burden of proving that the Department erred in reducing his services in those areas.

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.

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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: [REDACTED]

Date Mailed: [REDACTED]

SK/db

cc: [REDACTED]

***** NOTICE *****

The Michigan Administrative Hearing System may order a rehearing on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. The Michigan Administrative Hearing System will not order a rehearing on the Department's motion where the final decision or rehearing cannot be implemented within 90 days of the filing of the original request. The Appellant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt of the rehearing decision.