

**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. 2013-9072 HHS
Case No. ██████████

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.*, and upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. Appellant appeared and testified on her own behalf. ██████████, Appeals Review Officer, represented the Department of Community Health. ██████████, Adult Services Worker (ASW), appeared as a witness 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 lumbar radiculopathy, cervical neurogenic disc disease, a heart murmur, a traumatic brain injury, osteoporosis, and arthritis. (Respondent's Exhibit A, page 14).
2. Appellant had been receiving HHS in the amount of 54 hours and 11 minutes per month, with a total care cost of \$██████ per month. (Respondent's Exhibit A, page 24).
3. Specifically, HHS had been authorized for assistance with bathing, taking medication, light housework, laundry, shopping, and meal preparation. (Respondent's Exhibit A, page 24).
4. On ██████████, ASW ████████ conducted a home visit and reassessment of Appellant's services. Both Appellant and her provider were present during that visit. (Respondent's Exhibit A, page 11).

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5. During the reassessment, Appellant's provider informed ASW ██████ that he and Appellant lived together. Appellant did not correct him or say anything at all regarding the living arrangement. (Testimony of Appellant; Respondent's Exhibit A, page 11).
6. Appellant and her provider also reported that the provider only bathes Appellant once or twice a month, and that female friends or aides to Appellant's mother primarily assist Appellant with bathing. (Testimony of ASW ██████; Respondent's Exhibit A, page 11).
7. Appellant's provider would then pay whoever assisted Appellant with bathing out of his wages. (Testimony of Appellant).
8. Appellant's stove does not work. She and her provider also reported that the provider does not cook for Appellant much, but will bring over microwavable meals or already prepared foods. They would eat the same meals. (Testimony of Appellant; Testimony of ASW ██████; Respondent's Exhibit A, page 11).
9. Based on those reports, ASW ██████ decided to adjust Appellant's HHS and reduce them overall. (Testimony of ASW ██████; Respondent's Exhibit A, page 11).
10. Reductions were to be made to assistance with bathing, housework, meal preparation, laundry, and shopping. The HHS authorized for assistance with taking medication remained the same and assistance with dressing was added. (Respondent's Exhibit A, pages 24-25).
11. Overall, Appellant's services were reduced to 20 hours and 22 minutes per month, with a total monthly care cost of \$██████. (Respondent's Exhibit A, page 25).
12. On ██████, the Department sent Appellant written notice that her HHS would be reduced on ██████. (Respondent's Exhibit A, pages 5-10).
13. On ██████, the Michigan Administrative Hearing System (MAHS) received a request for hearing in this matter. (Respondent's Exhibit A, page 4).
14. A telephone hearing was scheduled for ██████.
15. On ██████, the Department submitted a request that the matter be adjourned due to the unavailability of its witness.
16. The Department's request was granted and the telephone hearing was rescheduled for ██████.

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17. On [REDACTED], Appellant submitted a request that the matter be adjourned because she would not be able to attend the hearing on that date.
18. Appellant's request was granted and the telephone hearing rescheduled for [REDACTED]
19. On [REDACTED], Appellant requested that the matter be rescheduled as an in-person hearing.
20. The matter was then rescheduled for [REDACTED] as an in-person hearing.
21. The in-person hearing in this matter was held on [REDACTED].

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 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.

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These services are furnished to individuals who are **not** currently residing in a hospital, nursing facility, licensed foster care home/home for the aged, Intermediate Care Facility (ICF) for persons with developmental disabilities or institution for mental illness.

These activities must be certified by a Medicaid enrolled medical professional and may be provided by individuals or by private or public agencies. **The medical professional does not prescribe or authorize personal care services.** Needed services are determined by the comprehensive assessment conducted by the adult services specialist.

Personal care services which are eligible for Title XIX funding are limited to:

Activities of Daily Living (ADL)

- Eating.
- Toileting.
- Bathing.
- Grooming.
- Dressing.
- Transferring.
- Mobility.

Instrumental Activities of Daily Living (IADL)

- Taking medication.
- Meal preparation/cleanup.
- Shopping for food and other necessities of daily living.
- Laundry.
- Housework.

An individual must be assessed with at least one Activity of Daily Living (ADL) in order to be eligible to receive home help services.

Note: If the assessment determines a need for an ADL at a level 3 or greater but these services are not paid for by the department, the individual would be eligible to receive IADL services.

Example: Ms. Smith is assessed at a level 4 for bathing however she refuses to receive assistance. Ms. Smith would be eligible to receive assistance with IADL's if the assessment determines a need at a level 3 or greater

* * *

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). [ASM 101, pages 1-3 of 4.]

Moreover, ASM 120 states:

Functional Assessment

The **Functional Assessment** module of the **ASCAP** comprehensive assessment is the basis for service planning and for the 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

Functional Scale

ADLs and IADLs are assessed according to the following five-point scale:

1. Independent: Performs the activity safely with no human assistance.

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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.

* * *

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.

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- 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. [ASM 120, pages 2-4 of 5.]

Here, the Department reduced Appellant's HHS authorized for assistance with the tasks of bathing, housework, meal preparation, laundry, and shopping.

Appellant bears the burden of proving by a preponderance of the evidence that the Department erred in making those reductions.

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 decision to reduce Appellant's HHS should be affirmed.

Housework, Laundry, and Shopping

The HHS authorized for assistance with the tasks of housework, laundry and shopping were all reduced in this case by one-half: from 6 hours and 1 minute a month to 3 hours and 1 minute a month for housework assistance; from 7 hours and 1 minute a month to 3 hours and 31 minutes a month for laundry assistance; and from 5 hours and 1 minute

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a month to 2 hours and 30 minutes a month for shopping assistance. (Respondent's Exhibit A, pages 24-25).

ASW ██████ wrote in her notes at the time of the reduction and testified during the hearing that the reduction was based on reports that Appellant and her provider both lived in Appellant's residence and the need, under policy, to prorate her services by one-half due to a shared living arrangement. She also noted that Appellant is now receiving half of the monthly maximum hour limits for those IADLs.

In response, Appellant argues that her provider did not actually live with her at the time of the reduction in this case. According to Appellant, he did have a room at her house and occasionally stayed over, but his primary residence was elsewhere and he only stayed over when necessary.¹

Appellant does acknowledge, however, that her provider did state that he lives at the same residence as Appellant and that she did not correct him during the home visit. Appellant's residence is also her provider's mailing address. Appellant could not explain why her provider stated that he lived with her when he did not, but she did speculate that it had something to do with his finances or mortgage.

Given the statements made by the provider regarding a shared living arrangement during the home visit, ASW ██████ properly found that Appellant and her provider lived together. Appellant was present when her provider stated that they shared the house and did not correct him or dispute that statement. The Department is justified in relying on what is reported.

Moreover, given that finding regarding a shared living arrangement, the Department was also bound to follow the mandated policy and prorate the HHS time and payment for all IADLs, except taking medication, by one-half.

The Department did prorate HHS for housework, laundry, and shopping by one-half and Appellant is now receiving half of the monthly maximum hour limits for those IADLs. That decision must be sustained.

Meal Preparation

The HHS authorized for assistance with the task of meal preparation was reduced from 50 minutes a day, 7 days a week (or 25 hours and 5 minutes a month), to 15 minutes a day, 7 days a week (or 7 hours and 31 minutes a month). (Respondent's Exhibit A, pages 24-25).

¹ Appellant also testified that her provider owns the house she lives in and that she pays him rent. As testified to by the Department's representative, such an arrangement violates policy and Appellant's landlord cannot be her enrolled provider. However, the Department only just learned about the arrangement and has not taken any negative action based on it. Therefore, this decision will not address that possible violation of policy. The Department's representative did warn Appellant that the arrangement with her landlord/provider could affect Appellant's HHS in the future.

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Appellant was therefore previously receiving the monthly maximum hour limit for assistance with meal preparation. According to ASW ██████████ notes and testimony, the reduction from the maximum amount was based on the need to prorate Appellant's services due to a shared household and the fact that Appellant's provider was not cooking for Appellant. According to ASW ██████████, Appellant and her provider reported that the provider does not cook meals for Appellant and instead only brings over microwavable meals or foods already prepared.

As discussed above, Appellant asserts that she lives alone and that her provider does not share her residence. Appellant also testified that her provider takes care of all the meal preparation. Appellant's own stove does not work, but she does have a microwave and her provider brings over microwavable meals or other meals already prepared.

Appellant bears the burden of proving by a preponderance of the evidence that the Department erred in reducing her HHS. With respect to assistance with meal preparation, Appellant failed to meet that burden of proof. While the provider supplies her meals, Appellant acknowledges that no extensive cooking is done and that her provider instead brings over microwavable or ready-made meals. Such quick meals do not require the maximum amount of assistance allowed by policy and the Department was previously authorizing far more assistance with meal preparation than was necessary or actually being provided. Moreover, for the same reasons discussed above, the Department properly found that Appellant had a shared living arrangement with her provider and that it must prorate by one-half the assistance it would authorize for meal preparation had Appellant lived alone. The reduction in assistance with meal preparation was therefore proper.

Bathing

In this case, the HHS authorized for assistance with bathing were reduced from 28 minutes a day, 4 days a week (or 8 hours and 2 minutes per month), to 10 minutes a day, 2 days per month (or 20 minutes per month).

ASW ██████████ testified and wrote in her notes that the reduction was based on reports from Appellant and her provider that the provider only bathed Appellant once or twice a month. Rather than bathing Appellant, the provider was paying female friends or aides to Appellant's mother to assist Appellant with bathing. Appellant's provider would pay whoever assisted Appellant with bathing out of his wages. According to ASW ██████████, per policy, the Department cannot pay for services unless that assistance is being provided by the enrolled HHS provider. ASW ██████████ also indicated a willingness to assist Appellant in enrolling another provider for bathing assistance if Appellant wished.

Appellant does not dispute ASW ██████████ testimony or reports regarding the bathing assistance at the time of the assessment. She does testify that she and her provider mistakenly believed that such an arrangement was permissible and that Appellant felt more comfortable with a female bathing her. Appellant also testified that her provider is the only person currently assisting her bathing now.

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This Administrative Law Judge is limited to reviewing the Department's decision in light of the information it had at the time it made that decision. Here, given the information provided by Appellant and her provider during the assessment, it is clear that the Department properly reduced the assistance authorized for help with bathing on the basis that the only enrolled provider was not providing such assistance. To the extent things have changed since the reduction, Appellant must request additional HHS for assistance with bathing.

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

Date Signed: 7/11/2013

Date Mailed: 7/11/2013

cc:



***** NOTICE *****

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