

**STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

P.O. Box 30763, Lansing, MI 48909  
(517) 335-2484; Fax: (517) 373-4147

**IN THE MATTER OF:**

██████████

Appellant.

**Docket No.** 14-005547 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 the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. Appellant appeared and testified on his own behalf. ██████████ Appeals Review Officer, represented the Department of Community Health (DCH or Department). ██████████ an Adult Services Worker (ASW) from the ██████████ County Department of Human Services (DHS), testified as a witness for the Department.

**ISSUE**

Did the Department properly suspend 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 schizoaffective disorder, schizophrenia, and post-traumatic stress disorder. (Respondent's Exhibit A, pages 5, 14).
2. Appellant had been receiving HHS through the Department in the amount of ██████ hours and ██████ minutes per month, with a total monthly care cost of ██████. (Respondent's Exhibit A, page 12).
3. Specifically, Appellant was authorized for assistance with the tasks of dressing, taking medications, laundry, shopping, housework, and meal preparation. (Respondent's Exhibit A, page 12).
4. The task of dressing is identified as an Activity of Daily Living (ADL) by the Department while the tasks of taking medications, meal preparation, shopping, laundry, and housework are all identified as Instrumental Activities of Daily Living (IADLs). (Adult Services Manual 101 (12-1-2013) (hereinafter "ASM 101"), page 2 of 5).

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5. On ██████████, ASW ██████████ conducted a home visit and assessment with Appellant. (Respondent's Exhibit A, pages 10-11).
6. During that assessment, Appellant denied needing any assistance with taking his medications, but also reported that he still needs assistance with the tasks of dressing, laundry, shopping, housework, and meal preparation. (Respondent's Exhibit A, pages 10-11; Testimony of Appellant; Testimony of ASW ██████████).
7. With respect to dressing assistance, Appellant specifically reported that his provider will straighten him out and fasten his shoes, which Appellant claimed he could not do because of his weight/stomach. (Respondent's Exhibit A, pages 10-11; Testimony of Appellant; Testimony of ASW ██████████).
8. However, given Appellant's undisputed physical capabilities in other areas, ASW Shamburger doubted that he needed any hands-on assistance with dressing. (Respondent's Exhibit A, pages 10-11; Testimony of ASW ██████████).
9. Accordingly, she asked Appellant to provide an updated medical needs form certifying a medical need for assistance with dressing. (Respondent's Exhibit A, pages 10-11; Testimony of Appellant; Testimony of ASW ██████████).
10. If Appellant did not require hand-on assistance with dressing, he would not meet the criteria for HHS as an individual is only eligible to receive HHS in general, or with any IADLs in particular, if he or she has a need for assistance with at least one ADL at a level 3 or greater. (ASM 101, page 2 of 5).
11. No updated medical needs form was received by ██████████ and, on that date, the Department sent Appellant a written advance notice of suspension. (Respondent's Exhibit A, pages 6-9; Testimony of ASW ██████████).
12. That advance negative action notice stated that the Department still needed an updated medical needs form and that Appellant's HHS would be suspended on ██████████ if the form was not received by that date. (Respondent's Exhibit A, pages 6-9).
13. No updated medical needs form was received by ██████████ and Appellant's HHS were therefore suspended. (Testimony of ASW ██████████).
14. On ██████████ the Michigan Administrative Hearing System (MAHS) received the request for hearing filed by Appellant in this matter. (Respondent's Exhibit A, pages 4-5).

15. A medical needs form signed by Appellant's doctor on ██████████ was attached to the request for hearing. (Respondent's Exhibit A, pages 4-5).
16. In that medical needs form, Appellant's doctor only certified that Appellant has a medical need for assistance with the tasks of taking medications, meal preparation, shopping, laundry, and housework. (Respondent's Exhibit A, page 5).
17. ASW Shamburger received a copy of the medical needs form along with the request for hearing, but, given that Appellant's doctor only certified a need for assistance with IADLs, she determined that she should close Appellant's case. (Testimony of ASW ██████████).
18. However, given the pending appeal regarding the suspension, she did not take any further action with respect to Appellant's HHS. (Testimony of ASW ██████████).

### **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.

ASM 101 and Adult Services Manual 120 (12-1-2013) (hereinafter "ASM 120") address the issues of what services are included in HHS and how such services are assessed. For example, ASM 101 provides:

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.

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.

**Note:** If an individual uses adaptive equipment to assist with an ADL, and without the use of this equipment the person would require hands-on care, the individual must be ranked a level 3 or greater on the functional assessment. This individual would be eligible to receive home help services.

**Example:** Mr. Jones utilizes a transfer bench to get in and out of the bathtub which allows him to bathe himself without the hands-on assistance of another. The adult services specialist must rank Mr. Jones a 3 or greater under the functional assessment. Mr. Jones would be eligible to receive home help services.

Assistive technology would include such items as walkers, wheelchairs, canes, reachers, lift chairs, bath benches, grab bars and handheld showers.

\* \* \*

### **Services not Covered by Home Help**

- 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.
- 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 1-3, 5 of 5*

Moreover, ASM 120 states:

### **Functional Assessment**

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

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 if assessed at a level 3 or greater.

**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.

**Note:** If an individual uses adaptive equipment to assist with an ADL, and without the use of this equipment the person would require hands-on care, the individual must be ranked a level 3 or greater on the functional assessment. This individual would be eligible to receive home help services.

**Example:** Mr. Jones utilizes a transfer bench to get in and out of the bathtub, which allows him to bathe himself without the hands-on assistance of another. The adult services specialist must rank Mr. Jones a 3 or greater under the

functional assessment. Mr. Jones would be eligible to receive home help services.

Assistive technology includes such items as walkers, wheelchairs, canes, reachers, lift chairs, bath benches, grab bars and hand held showers.

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 Needs**

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.

Moreover, with respect to annual reviews of HHS, Adult Services Manual 155 (5-1-2013), page 2 of 2, states in part:

### **Annual Redetermination**

Procedures and case documentation for the annual review are the same as the six month review, with the following addition(s):

- A new DHS-54A certification, if home help services are being paid.

**Note:** The medical needs form for SSI recipients and Disabled Adult Children (DAC) is only required at the initial opening and is not required for the redetermination process. All other Medicaid recipients will need to have a DHS-54A completed at the initial opening and annually thereafter.

- Contact must be made with the care provider, either by phone or face-to-face, to verify services are being provided.

Pursuant to the above policies, the Department suspended Appellant's HHS. In particular, ASW ██████████ testified that questions arose during the redetermination whether Appellant's needed any assistance with ADLs and that, in light of those questions and instead of closing out Appellant's case, she gave Appellant an opportunity to provide an updated medical needs form certifying a medical need for assistance with dressing. She also testified that Appellant failed to provide an updated medical needs form, even after being sent advance notice that his services would be suspended if one was not received.

Appellant bears the burden of proving by a preponderance of the evidence that the Department erred in suspending his HHS. Moreover, the undersigned Administrative Law Judge must review the Department's decision in light of the information available at the time the decision was made.

Here, Appellant testified that he did send in an updated medical needs form after receiving the advance negative action notice. He also attached a copy of that form, signed by his doctor on ██████████ to the request for hearing. However, the undersigned Administrative Law Judge finds ASW ██████████ to be credible in her testimony that no updated medical needs form was received prior to the effective date identified in the advance notice of suspension. Accordingly, the suspension was proper and the Department's decision must be affirmed.<sup>1</sup>

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<sup>1</sup> The Department also noted that the updated medical needs form failed to certify any need for assistance with ADLs and, consequently, it will likely terminate Appellant's services in the future. However, no such action has yet been taken and that issue is not before the undersigned Administrative Law Judge.

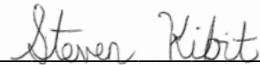
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**DECISION AND ORDER**

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

**IT IS THEREFORE ORDERED THAT:**

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



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Steven Kibit  
Administrative Law Judge  
for Nick Lyon, 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.