

**STATE OF MICHIGAN**  
**MICHIGAN ADMINISTRATIVE HEARING SYSTEM**  
**FOR THE DEPARTMENT OF COMMUNITY HEALTH**  
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(877) 833-0870; Fax: (517) 373-4147

**IN THE MATTER OF:**

Docket No. 2014-007517 HHS  
Case No. [REDACTED]

[REDACTED],

Appellant

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**DECISION AND ORDER**

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

After due notice, a hearing was held on [REDACTED]. Appellant personally appeared. Appellant did not testify as Appellant is non-verbal. Appellant was represented by [REDACTED], his caregiver of [REDACTED] years. The following individuals appeared as witnesses on behalf of Appellant: [REDACTED], Appellant's mother; [REDACTED], Appellant's Supports Coordinator/Case Manager with CMH; [REDACTED], Appellant's caregiver's sister; [REDACTED], Appellant's caregiver's sister; [REDACTED]; and [REDACTED], Appellant's father.

[REDACTED], Appeals Review Officer, represented the Department. [REDACTED], Adult Services Worker, appeared as a witness for the Department. The Adult Services Supervisor in this matter did not appear.

**ISSUE**

Did the Department properly reduce Appellant's Home Help Services ("HHS") hours from [REDACTED] to [REDACTED] per month?

**FINDINGS OF FACT**

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. At all relevant times, Appellant has been and continues to be [REDACTED] year old male beneficiary of the Medicaid Program administered by the State of Michigan under the Adult Disabled Child (DAC) program.
2. Appellant's mother has legal Guardianship over Appellant pursuant to an Order Appointing Guardian for Individual with a Developmental Disability. The [REDACTED] Circuit Court for [REDACTED] County states on the order that Appellant is "totally without capacity to care for his tasks, responsibilities, or judgments ...in all areas of decision making."

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3. Appellant's CMH witness testified that Appellant has chosen self-determination. Appellant needs constant supervision.
4. Appellant has had an HHS case open for over █████ years.
5. On █████ the Department made a home visit for a redetermination of his HHS case. Appellant and his caregiver live together; both were present at the administrative hearing. (Exhibit A)
6. On █████ the ASW issued a Negative Action Letter. The Department's testimony indicated that the ASW reduced meal preparation and bathing. The Department's negative action failed to identify the tasks that were being reduced and the reason. (Exhibit A.5-9)
7. On █████ the ASW issued a second Negative Action Letter that stated: "Per Supervisor shared living is half of the total amount. House laundry and shopping adjusted for these tasks." (Exhibit A.11) Testimony at the hearing was that the housework task was actually increased.
8. Appellant cannot bathe and perform any bathing activities by himself. (Testimony)
9. Appellant's food must be cut up so that Appellant will not choke.
10. On █████ Appellant's guardian requested an administrative hearing in part on the grounds of the "negative action took away 4 days of laundry and 4 days of housework." (Exhibit A.4) Appellant was not adequately informed as to the action(s) the Department was taking, and the reason.
11. Appellant's representative submitted a letter along with photos to document that Appellant has been receiving HHS for █████ years plus consistently without disputes; that there have been no changes that would trigger a shared calculation; that Appellant does not share laundry or food with the caregiver; Appellant's laundry must be done seven days a week, and separately due to feces smears in the bed linen, and on Appellant's toys and books; Appellant has his own hamper and laundry basket; Appellant has his own food stamps, and his own location for food-his own shelves and his own freezer for his food. Appellant is unable to shop for himself, carry bags or sort foods, etc. Laundry must be done every day, including cleaning and sanitizing his room. Due to his Autism Spectrum Disorder Appellant soothes himself at night by putting his hand in his private area and plays with feces etc. (Exhibit B; Letter of █████)
12. Appellant eats a unique diet. Appellant's representative attached photos to the █████ Letter documenting Appellant's separate food cabinet, Appellant's freezer, and examples of the bedding, light switch, toys, bed, door knob, and books covered in feces. Appellant does not use a toilet; Appellant wears diapers as Appellant has a prolapsed bowel. (Exhibit B and Testimony)

13. Appellant's representative indicated that she shops with Appellant and not for herself at the same time. Appellant is non-verbal, and taps to indicate his likes and dislikes of food. (Testimony)
14. The ASW at the administrative hearing testified that she did not prorate but issued the 2<sup>nd</sup> Negative Action Letter "...because I was given a directive by my supervisor" and "I did as I was asked..." (Testimony of ASW) The ASW indicated that she, as an ASW, understood the incidents and accidents that contribute to the case. (Testimony)
15. The ASS who issued the directive was not present at the assessment. The ASS who issued a directive to the ASW in this case was not present at the administrative hearing for testimony and/or cross-examination.
16. The ASW testified that she reduced eating and cutting up "because it doesn't take that much time." (Testimony)
17. The ASW testified that she did not have the assessment at the administrative hearing.
18. The difference between the first reduction and the second is not a reduction by ½.

### **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 (ASM) 105, 11-1-11, addresses HHS eligibility requirements:

#### **Requirements**

Home help eligibility requirements include all of the following:

- Medicaid eligibility.
- Certification of medical need.
- Need for service, based on a complete comprehensive assessment (DHS-324) indicating a

functional limitation of level 3 or greater for activities of daily living (ADL).

- Appropriate Level of Care (LOC) status.

### **Medical Need Certification**

Medical needs are certified utilizing the DHS-54A, Medical Needs form and must be completed by a Medicaid enrolled medical professional. Completed DHS-54A or veterans administration medical forms are acceptable for individual treated by a VA physician; see ASM 115, Adult Services Requirements.

### **Necessity For Service**

The adult services specialist is responsible for determining the necessity and level of need for home help services based on:

- Client choice.
- A completed DHS-324, Adult Services Comprehensive Assessment. 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.

- Verification of the client's medical need by a Medicaid enrolled medical professional via the DHS-54A. The client is responsible for obtaining the medical certification of need; see ASM 115, Adult Services Requirements.

*Adult Services Manual (ASM) 105,  
11-1-2011, Pages 2-3 of 3*

Adult Services Manual (ASM) 120, 5-1-12, addresses the comprehensive assessment:

## **INTRODUCTION**

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 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; see RFF 1555. The form is primarily used for APS cases.
- Follow rules of confidentiality when home help cases have companion APS cases, see SRM 131 Confidentiality.

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## **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.
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 ranking 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 determined 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.

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### **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 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.

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.

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.

*Adult Services Manual (ASM) 120, 5-1-2012,*  
Pages 1-5 of 5

Adult Services Manual (ASM) 101, 11-1-11, addresses services not covered by HHS:

### **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).
- Services provided by another resource at the same time (for example, hospitalization, MI-Choice Waiver).

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- 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.

*Adult Services Manual (ASM) 101, 11-1-2011,*  
Pages 3-4 of 4.

The purview of an administrative law judge (ALJ) at an administrative hearing is to make a determination as to whether the Department acted correctly under its policy and procedure at the time the Department made its determination, and, to ensure that the determination is not contrary to law.

In this case, as noted above, there were two negative actions notices. The ASW indicated she first reduced, then issued the 2<sup>nd</sup> on the grounds of a "Supervisor's directive" regarding proration. However, the information on the notices, and, the actual proration in the 2<sup>nd</sup> letter is not a reduction by ½. In fact, housework actually increased.

Appellant has the burden of proof by a preponderance of evidence.

In this case, testimony and Exhibit B, significantly and substantially meets the burden of proof by a preponderance that Appellant's HHS case is justified by the initial number of hours Appellant had, prior to the first and 2<sup>nd</sup> negative action notices.

As to the first Negative Action, the language in the negative action and what ultimately resulted in the reduction in this case are inconsistent. As noted in the Findings of Fact, housework actually increased; it did not decrease. Moreover, the testimony by the Department as to cutting up Appellant's food and bathing was not specific enough so as to inform the reviewing forum as to what was done and why. And because the testimony and evidence presented by the Appellant is substantial, the burden shifts to the Department. Even if the Department's evidence was not patently inconsistent, the Department failed to rebut Appellant's evidence.

As to the 2<sup>nd</sup>-which was issued per the ASW's Testimony and by the actual language on the notice, the HHS program was further reduced "per Supervisor." Under ASM 120, there is no proration of IADLs where it clearly documented that the IADLs for the Appellant are completed separately from others in the home. (ASM 120, page 5/7). Appellant's representative presented credible and substantial evidence of separate activities as they relate to IADLs. Moreover, the supervisor who issued the directive to



[REDACTED]  
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cc:

[REDACTED]

Date Signed: [REDACTED]

Date Mailed: [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.