

**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. 14-011628 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.*, upon Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. Attorney ██████████ appeared on Appellant's behalf. ██████████, Appellant's sister, guardian and caregiver, and ██████████, R.N., appeared as witnesses for Appellant. ██████████, 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 deny Appellant's request for additional Home Help Services (HHS) hours?

**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, born ██████████, who has been diagnosed with cerebral palsy, seizure disorders, epilepsy, behavioral issues, hiatal hernia with digestive issues including GERDS. Appellant is also mentally challenged with a low IQ. (Exhibit A, pp 7, 14; Testimony)
2. On or about ██████████, Appellant was reassessed for continued HHS. (Exhibit A, pp 11-12; Testimony)
3. As part of the application and assessment process, an Adult Services Worker (ASW) conducted a home visit with Appellant and his guardian/sister/caregiver on ██████████. (Exhibit A, pp 11-12; Testimony)
4. Appellant lives with his sister/guardian/caregiver, as well as his elderly mother, who suffers from dementia. (Exhibit A, pp 11; Testimony)
5. Following the home visit, Appellant's was approved to receive 76 hours

and 15 minutes of HHS per month, with a total monthly care cost of \$██████████. Payments for some of Appellant's IADL's were prorated to reflect a shared hospital. (Exhibit A, pp 15-16, 20-23; Testimony)

6. On ██████████, the Department sent Appellant a Services and Payment Approval Notice. (Exhibit A, pp 9-10)
7. On ██████████, Appellant's Request for a Pre-Hearing Conference and Hearing was received by the Michigan Administrative Hearing System. Prior to the administrative hearing, the parties held a Pre-Hearing Conference with the Department. Following the Pre-Hearing Conference, the Department upheld its original determination and the matter proceeded to a hearing. (Exhibit 1; Testimony)
8. Prior to the Pre-Hearing Conference, Appellant also submitted an Affidavit from his physician, Dr. ██████████, dated ██████████. The Affidavit detailed Appellant's medical conditions and care needs. (Exhibit A, pp 7-8, Exhibit 2; Testimony)
9. On ██████████, Appellant submitted additional information from his Department of Human Services (DHS) file, including the Adult Services Comprehensive Assessment Form and correspondence between Appellant's attorney and the ASW. (Exhibit 3)

## **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 120, 12-1-13), pages 1-6 of 7 addresses the adult services 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 will 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. 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 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 or her daughter agrees to assist her at no charge. Ms. Smith would be eligible to receive assistance with IADLs if the assessment determined 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.

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### **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 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.

### ***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.

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. Emphasis added

\* \* \* \*

The Department's ASW testified that she rated Appellant a 4 for bathing (Requires direct hand[s]-on assistance with most aspects of bathing. Would be at risk if left alone) and allocated 18 minutes per day, 7 days per week of HHS for assistance with bathing, which is the maximum allowed under the Reasonable Time Schedule (RTS) found in Department policy.

The Department's ASW testified that she rated Appellant a 5 for grooming (Totally dependent on others in all areas of grooming) and allocated 12 minutes per day, 7 days per week for grooming. Appellant's attorney indicated that they were not objecting to the amount of HHS allocated for grooming.

The Department's ASW testified that she rated Appellant a 4 for dressing (Requires direct hands on assistance with most aspects of dressing. Without assistance would be inappropriately or inadequately dressed) and allocated 16 minutes per day, 7 days per week for dressing.

The Department's ASW testified that she rated Appellant a 4 for toileting (The client does not carry out most activities without human assistance) and allocated 26 minutes per day, 7 days per week for toileting. The Department's ASW noted that Appellant has trouble wiping himself when toileting, especially if he has a soft bowel movement.

The Department's ASW testified that she rated Appellant a 3 for transferring (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). The Department's ASW indicated that she did not allocate any time for transferring, noting that Appellant goes to day programs and is able to maneuver himself at such programs.

The Department's ASW testified that she rated Appellant a 5 for continence. Appellant's attorney indicated that they were not objecting to the rating for continence.

The Department's ASW testified that she rated Appellant a 3 for eating (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) and allocated 10 minutes per day, 7 days per week for eating. The Department's ASW noted that Appellant's foods need to be cut up, that he has a tendency to gobble his food, and that he has his lunch at the day program each weekday (although those meals still are prepared by his sister/guardian/caregiver).

The Department's ASW testified that she rated Appellant a 1 for respiration. Appellant's attorney indicated that they were not objecting to the rating for respiration.

The Department's ASW testified that she rated Appellant a 3 for mobility (Minimal hands-on assistance required for specific maneuvers with a wheelchair, negotiating

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stairs or moving on certain surfaces. Without the use of a walker or pronged cane, client would need physical assistance) and allocated 14 minutes per day, 7 days per week for mobility. The Department's ASW noted that time was allocated for mobility and not transferring because Appellant needs assistance while walking longer distances, but is mobile with a walker. The Department's ASW at first testified that she had rated Appellant a 4 for mobility, but upon rechecking her records, confirmed that she had rated Appellant a 3 for mobility at the time of the reassessment.

The Department's ASW testified that she rated Appellant a 5 for medication. Appellant's attorney indicated that they were not objecting to the rating for medication.

With regard to Appellant's Incidental Activities for Daily Living (IADL's), the Department's ASW testified that she allocated the maximum amount of HHS for each IADL, but prorated (cut by one-half) the HHS hours authorized because Appellant shared the home with his sister and guardian. The Department's ASW did indicate that she did not prorate the time for laundry because of Appellant's significant incontinence issues and the laundry resulting from that condition. Appellant's attorney indicated that they did not object to the amount of HHS authorized for laundry.

The Department's ASW testified that the times she allotted were based on the reasonable time schedule (RTS) found in Department policy, her observations during the assessment, and what Appellant's sister/guardian/caregiver told her during the assessment. The Department's ASW testified that under Department policy, it is the ASW's assessment that determines the amount of HHS to be authorized. The Department's ASW indicated that she has a caseload of approximately 200 clients and she has to conduct two assessments per year for each client. The Department's ASW indicated that approximately █% of her caseload consists of developmentally disabled persons such as Appellant.

Appellant's sister/guardian/caregiver testified that she has been Appellant's guardian for █ years and that she was a special education teacher for 30 years before she retired early to take care of Appellant. Appellant's sister/guardian/caregiver indicated that Appellant had lived in Adult Foster Care (AFC) homes in the past and he did not receive the care that he deserved in those homes. Appellant's sister/guardian/caregiver testified that Appellant is about five years old mentally, has temper tantrums, is difficult, is obstinate, and does not listen to instructions or commands. Appellant's sister/guardian/caregiver testified that their mother, who lives in the home, is █ years old and suffers from severe dementia. As such, Appellant's sister/guardian/caregiver indicated that their mother is also completely dependent on her for care and is unable to provide any assistance with caring for Appellant.

Appellant's sister/guardian/caregiver discussed her frustration with the scheduling of Appellant's reassessment. However, since Appellant's HHS was never interrupted due to these issues, the matter would amount to a recipient's rights issue, not an issue for a Medicaid fair hearing.

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Appellant's sister/guardian/caregiver testified that Appellant's condition has deteriorated over the last couple of years. Appellant's sister/guardian/caregiver indicated that Appellant now suffers from a floppy bladder, which makes it difficult for Appellant to fully empty his bladder, which leads to incontinence issues during the night. Appellant's sister/guardian/caregiver also testified that Appellant prefers to stand while urinating, which causes a mess, which leads to additional housework and laundry. Appellant's sister/guardian/caregiver testified that Appellant has also developed GERD in the last year or so, has had hernia surgery, recurrent yeast infections in his groin area and has swelling in his groin area which requires him to sit on a donut to relieve the pressure. Appellant's sister/guardian/caregiver testified that Appellant is a fall risk and she has to assist him up the stairs into and out of the house, as well as up the 13 stairs leading to the second floor, where Appellant's bedroom is. Appellant's sister/guardian/caregiver testified that Appellant takes medications in the evening that make him very sleepy and if she does not get him up the stairs before the medications take effect it is even more difficult to get him up the stairs. Appellant's sister/guardian/caregiver testified that Appellant uses a walker while at his day program and hangs on to furniture a lot at home while moving about.

Appellant's sister/guardian/caregiver testified that it is difficult to get Appellant on and off the toilet during bowel movements and that Appellant's moving around causes a mess, which also leads to more housecleaning. Appellant's sister/guardian/caregiver testified that Appellant cannot cut his own food, cannot use a knife, can only eat small bites of food and usually gobbles his food and causes a general mess around him while eating, which leads to more housecleaning. Appellant's sister/guardian/caregiver indicated that neither she nor her mother cause a mess while eating, so the mess Appellant causes is solely attributable to him as is the resulting cleaning that needs to be done. Appellant's sister/guardian/caregiver testified that someone has to be present when Appellant eats otherwise there is a risk he will choke on his food. Appellant's sister/guardian/caregiver testified that for breakfast she prepares a protein shake and cereal or toast for Appellant and that no-one else eats breakfast with Appellant. For lunch, Appellant's sister/guardian/caregiver indicated that she prepares a ground baloney sandwich for Appellant, along with yogurt, bottled water and some snacks, which Appellant takes to his day program.

With regard to toileting, Appellant's sister/guardian/caregiver testified that Appellant does not do anything to help, that he can sit on the toilet, but moves around, causing a mess, which requires more cleaning. Appellant's sister/guardian/caregiver also indicated that she has to clean Appellant when he returns from the day program because they do not do a good job cleaning him after bowel movements. With regard to bathing, Appellant's sister/guardian/caregiver testified that Appellant washes his own private parts, but that she washes the rest of him and he cannot follow simple commands to assist her with bathing. Appellant's sister/guardian/caregiver testified that Appellant has been suffering from recurrent yeast infections in his groin area which requires her to dry Appellant thoroughly in that area and apply a medicated cream.

Appellant's sister/guardian/caregiver testified that Appellant is obese and currently has to sit on a donut because of swelling in his groin area. Appellant's

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sister/guardian/caregiver testified that Appellant did not get up when the ASW came for the reassessment. Appellant's sister/guardian/caregiver testified that if Appellant sits too long, he gets wobbly. Appellant's sister/guardian/caregiver indicated that she tries to teach Appellant how to do things, but the instructions do not sink in. Appellant's sister/guardian/caregiver indicated that Appellant wears diapers on occasion, but because he is so large, he will soak completely through a diaper, which causes just one more thing to clean up.

Appellant's witness testified that she is an R.N and a Case Manager for the local MI Choice Waiver Program. Appellant's witness indicated that she has a Bachelor's Degree in Psychology and was certified in Psychological Nursing for █████ years in the past. Appellant's witness testified that she conducts assessments similar to the one done here as part of her work at the Waiver Program. Appellant's witness testified that she met Appellant on ██████████ and conducted an assessment using the criteria used by HHS. Appellant's witness' assessment supported the testimony of Appellant's sister/guardian/caregiver.

Based on the evidence presented, Appellant has failed to prove, by a preponderance of the evidence, that he requires more HHS than he was approved for. The Department's ASW properly calculated Appellant's HHS based on policy and the information provided by Appellant's sister/guardian/caregiver at their meeting. It appears that Appellant's sister/guardian/caregiver may not have told the ASW all of the help the caregiver was providing at the reassessment, but the ASW can only base her findings on what she observes and what she was told. However, the undersigned would note that the ASW's assessment here appears to be far more thorough than the average assessment presented during these hearings. While it is possible that the ASW could have determined that none of Appellant's IADL's needed to be prorated based on the facts presented to her, she based her decision to prorate meal preparation, shopping, and housecleaning on her experience, the information told to her, and her own observations. It simply cannot be said, based on the information presented to her, that it is more likely than not that the ASW erred in her determination. However, it also appears that there have been some changes since the last assessment, which, it should be pointed out, happened close to six months prior to the hearing in this matter. Those changes may result in more HHS hours being approved for Appellant at his next assessment. It also should be noted that the assessment done on ██████████ is of little evidentiary value today given that it took place some five months after the assessment that gave rise to this hearing.

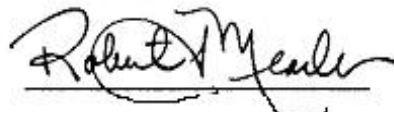
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**DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that, based on the available information, the Department properly denied Appellant's request for additional HHS.

**IT IS THEREFORE ORDERED THAT:**

The Department's decision is AFFIRMED.



Robert J. Meade  
Administrative Law Judge  
for Nick Lyon, Director  
Michigan Department of Community Health

cc:

[REDACTED]

RJM [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 must 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.