

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:

Docket No. 2014-11538 HHS

██████████
Appellant.
_____ /

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 ██████████. ██████████ appeared and testified on Appellant's behalf. ██████████, Appellant's son and care provider, also testified on Appellant's behalf. ██████████, Appeals Review Officer, represented the Department of Community Health. ██████████, Adult Services Worker (ASW), testified as a witness for the Department.

ISSUES

Did the Department properly deny Appellant's request for additional 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 atrial fibrillation; endometrial polyps; hypertension; hyperlipidemia; arthritis; gout; diabetes; and renal insufficiency. (Respondent's Exhibit A, page 12).
2. Appellant lives with ██████ adult sons; an adult daughter-in-law; and ██████ minor grandchildren. (Respondent's Exhibit A, page 13).
3. Since at least ██████████ Appellant has been receiving HHS through the Department. (Respondent's Exhibit A, page 17).

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4. On ██████████, ASW ██████ conducted a reassessment of Appellant's HHS in Appellant's home with Appellant and her provider. (Respondent's Exhibit A, page 7; Testimony of ASW ██████).
5. On ██████████, the Department sent Appellant a written Services and Payment Approval Notice providing that, effective ██████████ she was approved for HHS in the amount of ██████ hours and ██████ minutes per month, with a total monthly care cost of ██████. (Respondent's Exhibit A, pages 7-8, 21).
6. Specifically, Appellant was approved for assistance with bathing, grooming, dressing, toileting, transferring, mobility, housework, laundry, shopping, and meal preparation. (Respondent's Exhibit A, page 21).
7. On ██████████, the Department sent Appellant a written Advance Negative Action Notice providing that, effective ██████████ Appellant's HHS would be suspended until past due provider logs were completed. (Respondent's Exhibit A, pages 9-11).
8. Those logs were subsequently completed and the suspension never took effect. (Testimony of ASW ██████).
9. On or about ██████████, Appellant's son/provider telephoned ASW ██████ and requested an increase in HHS. (Respondent's Exhibit A, page 16; Testimony of Appellant's Representative; Testimony of ASW ██████).
10. ASW ██████ indicated that more hours or money would not be authorized and sent Appellant the forms necessary to request a hearing. (Respondent's Exhibit A, page 16; Testimony of Appellant's Representative; Testimony of ASW ██████).
11. On ██████████, ASW ██████ received a new DHS-54A Medical Needs Form completed by Dr. ██████████. (Respondent's Exhibit A, pages 5-6, 16).
12. In that medical needs form, Dr. ██████████ indicated that, in addition the tasks Appellant is already receiving assistance with, she also requires the complex care services of a bowel program, bed sore prevention, and range of motion exercises. (Respondent's Exhibit A, pages 5-6).
13. According to ASW ██████, that medical needs form was the ██████ time she was notified of any such potential complex care needs. (Respondent's Exhibit A, pages 5-6).

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14. On [REDACTED] the Michigan Administrative Hearing System (MAHS) received a request for hearing filed by Appellant regarding the amount of her HHS. (Respondent's Exhibit A, pages 4-6).
15. Appellant also requested that the hearing be in-person. (Respondent's Exhibit A, pages 4).
16. On [REDACTED], MAHS issued a Notice of In Person Hearing scheduled for [REDACTED].
17. On [REDACTED], ASW [REDACTED] telephoned Appellant's doctor's office to ask about Appellant's complex care needs. (Respondent's Exhibit A, page 18; Testimony of ASW [REDACTED]).
18. She was directed to a Dr. [REDACTED], who informed her that Appellant's bowel program referred to changing diapers and encouraging Appellant to use the bathroom every [REDACTED] hours; Appellant's range of motion referred to the physical therapy Appellant was receiving through a therapist; and the bedsore prevention referred to encouraging Appellant's family to change her position every [REDACTED] to [REDACTED] hours and prescribing some creams. (Respondent's Exhibit A, page 18; Testimony of ASW [REDACTED]).
19. The doctor also reported that, based on home calls and reports, the doctor believed multiple family members assisted Appellant. (Respondent's Exhibit A, page 18; Testimony of ASW [REDACTED]).
20. On [REDACTED], ASW [REDACTED] conducted another reassessment/home visit with Appellant and her care provider. (Respondent's Exhibit A, page 18; Testimony of ASW [REDACTED]).
21. During that visit, Appellant and her care provider reported that Appellant now gets out of bed and showers every day. (Respondent's Exhibit A, page 18; Testimony of ASW [REDACTED]).
22. They also reported that, while other family members are concerned about Appellant, only her son/care provider assists her. (Respondent's Exhibit A, page 18; Testimony of [REDACTED] Testimony of ASW [REDACTED]).
23. Following that assessment, ASW [REDACTED] determined that Appellant's HHS should be increased. (Respondent's Exhibit A, page 18; Testimony of ASW [REDACTED]).
24. Specifically, the days per week authorized for assistance with bathing, grooming, dressing, transferring, and mobility were changed from [REDACTED] days a week to [REDACTED] days a week based on the new reports regarding Appellant's daily activities. (Respondent's Exhibit A, page 18, 20-21).

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25. Assistance with laundry was also increased from █ hours and █ minutes per month to █ hours and █ minute per month after ASW █ determined that Appellant's laundry should no longer be prorated based on reports that she wears diapers, is incontinent, and her clothes are washed separately. (Respondent's Exhibit A, pages 18, 20-21).
26. Overall, Appellant's HHS were increased to █ hours and █ minutes per month, with a total monthly care cost of █. (Respondent's Exhibit A, pages 19-21).
27. On █ the Department sent Appellant written notice of the increase. (Respondent's Exhibit A, page 19).
28. The notice also provided that the increase would have a retroactive effective start date of █ (Respondent's Exhibit A, page 19).
29. Appellant remained unsatisfied with that increase and the hearing proceeded as scheduled on █

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 101 (12-1-2013) (hereinafter "ASM 101") and Adult Services Manual 120 (12-1-2013) (hereinafter "ASM 120") addressed the issues of what services are included in Home Help Services and how such services are assessed at the time of the relevant action in this case.

For example, ASM 101 provided:

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.

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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.

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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 or her daughter agrees to assist her at no charge. Ms. Smith would be eligible to receive assistance with IADL's 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.

Expanded Home Help Services (EHHS)

Expanded home help services can be authorized for individuals who have severe functional limitations which require such extensive care that the service cost must be approved by the adult services supervisor/local office designee and/or the Department of Community Health.

Complex Care

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.

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- 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.

* * *

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). 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.

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 IADL's 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.

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

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.

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Here, while the Department determined that Appellant's should be increased, Appellant remains dissatisfied with the amount of the increase and argues that additional HHS should also have been approved.

Appellant now bears the burden of proving by a preponderance of the evidence that the Department erred in making its decision.

For the reasons discussed below, this Administrative Law Judge finds that Appellant has not met her burden of proof and the Department's actions must therefore be affirmed.

IADLs

As described in the above policies, Instrumental Activities of Daily Living (IADLs) include taking medication; meal preparation and cleanup; shopping; laundry; and light housework. Appellant's HHS already includes assistance with all five of those tasks, but Appellant's representative argues that more time should be approved.

However, with respect to laundry, Appellant is already receiving the monthly maximum hour limit that can be approved for assistance with that task, *i.e.* ████████ hours a month. (Respondent's Exhibit A, page 20; ASM 120, page 6 of 7).

Moreover, with respect to meal preparation, shopping, and housework, Appellant was properly authorized for half of the maximum hour limit that can be approved for each task. (Respondent's Exhibit A, page 20; ASM 120, page 6 of 7). It is undisputed in this case that Appellant lives in a shared household with other adults and, in such situations, the above policy requires that the "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." ASM 120, page 6 of 7. Exceptions can be made where it is clearly documented that IADLs for the eligible client are completed separately from others in the home, as with laundry assistance in this case, but there was no such documentation or clear showing here.

Finally, regarding assistance with taking medications, ASW ██████ properly ranked Appellant a "4" in that task and the amount authorized, ██████ minutes a day, ██████ days a week, is based off of the reasonable time schedule (RTS) used by the Department. (Respondent's Exhibit A, page 14; Testimony of ASW ██████). Appellant's representative argues that Appellant should be ranked a "5" in that task, but her provider only testified that he sets up the pills and supervises Appellant taking them. (Testimony of ██████). As expressly described in the above policy, HHS must not be approved for supervising, monitoring, reminding, guiding, teaching or encouraging. See ASM 101, page 3 of 5. Therefore, because Appellant can physically take her pills herself, she is not totally dependent on others with respect to medications and Appellant failed to meet her burden of demonstrating that she should be ranked a "5" in that task or should be approved for more assistance.

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ADLs

Appellant also challenges the rankings assigned to Appellant's ADLs and the amount of assistance authorized for those tasks. According to Appellant's representative, Appellant should have been ranked a "5" in all ADLs as she is totally dependent on her caregiver in all areas.

ASW ██████ and the Department, however, only ranked Appellant a "4" in bathing; a "3" in grooming; a "4" in dressing; a "4" in toileting; a "4" in transferring; a "1" in eating; and a "4" in mobility. (Respondent's Exhibit A, pages 14-15). In determining the rankings, ASW ██████ testified that she does not rank people a "5" unless they are totally incapacitated and that, in this case, she took into account her observations that Appellant can sit up in her wheelchair, turn left to right, use her hands, and eat independently. (Testimony of ASW ██████). Prior notes also provided that Appellant only needed help getting in-and-out of bathtub; dressing ██████ a week given that she generally wears house dresses that she can put on herself; some boosting out of chairs and the bed; and some assistance moving her wheelchair. (Respondent's Exhibit A, pages 14-15). Moreover, ASW ██████ further testified that she generated the times authorized for assistance with ADLs from the rankings and the RTS used by the Department. (Testimony of ASW ██████).

Appellant has the burden of proving by a preponderance of the evidence that the Department erred in the denying the request for additional assistance with ADLs. Here, based on the above evidence and policy, Appellant has failed to meet that burden of proof.

While ASW ██████ mistakenly testified that a recipient must be totally incapacitated to be ranked a "5", rather than just being totally dependent as required by policy, the record does not suggest that Appellant is totally dependent on her provider for all ADLs. Appellant's provider simply broadly testified that he does "everything" for Appellant, but he did not contradict ASW ██████ specific testimony regarding her assessment of tasks that Appellant is capable of or even elaborate on the claims that the times already

authorized are insufficient. (Testimony of ██████). Such general testimony is neither credible nor persuasive. Moreover, Appellant's provider's testimony is also problematic given that, as displayed in his testimony regarding assistance with medications, he clearly believes HHS includes assistance such as supervising, monitoring, reminding, guiding, teaching or encouraging. (Testimony of ██████). As discussed above, such assistance is not covered by HHS and, by conflating covered and non-covered services, Appellant's representative and provider have failed to justify additional HHS. Accordingly, with respect to the times authorized for assistance with ADLs, Appellant has failed to meet her burden of proof and the Department's decisions must be affirmed.

Complex Care

Appellant's representative further argues that Appellant should have been granted assistance with the complex care needs identified by her doctor, including a bowel

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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.