

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. 2014-15468 REH

██████████

██████████

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 a request for a hearing filed on behalf of Appellant.

After due notice, a hearing was held on ██████████, Appellant's mother and plenary guardian, appeared and testified on Appellant's behalf. ██████████ ██████████ Appeals Review Officer, represented the Department of Community Health. ██████████ ██████████, Adult Services Worker (ASW) for ██████████ County DHS, appeared as a witness for the Department.

ISSUE

Did the Department properly reduce Appellant's Expanded 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 Lennox-gastaut syndrome epilepsy, chronic anemia, Uti chronic spasms, osteoporosis, developmental delay, gastroesophageal reflux disease (GERD), and syringomyalgia. (Exhibit A, p. 28 and testimony).
2. Appellant's mother is his plenary guardian. (Exhibit A, p. 12 and testimony).
3. Appellant has been receiving Expanded Home Help Services (EHHS) through the Department with his mother providing the services. (Exhibit A, pp. 9, 29, 40 and testimony).

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4. On [REDACTED] ASW [REDACTED] ASW conducted a home visit with the Appellant's mother/plenary guardian and provider and completed a [REDACTED] months assessment/redetermination of the Appellant's need for services. The ASW redetermined the tasks to be authorized for Appellant's EHHS based on the information provided by the Appellant's mother during the assessment. (Exhibit A, pp. 31-33).
5. Specifically, Appellant has been authorized to receive assistance with bathing, grooming, dressing, toileting, eating, mobility, taking medications, housework, laundry, shopping, meal preparation, and transferring,. (Exhibit A, pp. 39).
6. On [REDACTED], the Department issued an Advance Negative Action Notice to Appellant notifying him that his EHHS hours would be reduced to [REDACTED] hours and [REDACTED] minutes for a total monthly care cost of [REDACTED] effective [REDACTED]. The Notice stated that "After the most recent assessment, dressing has been increased and grooming, toileting, eating and meal prep have been decreased. Client resides in a shared household; therefore, meal prep per policy must be decreased to [REDACTED]. Provider stated the household follows a GERD diet so there are not any special meal preps. (Exhibit A, pp. 24-27, 39 and testimony).
7. On [REDACTED], the Michigan Administrative Hearing System (MAHS) received the Request for Hearing in this matter. (Exhibit A, pp. 11-23).
8. On [REDACTED] the matter was dismissed for Appellant's failure to appear for a hearing scheduled for [REDACTED]
9. A rehearing was granted 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.

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Adult Services Manual 101 (12-1-2013) (hereinafter "ASM 101") and Adult Services Manual 120 (12-1-2013) (hereinafter "ASM 120") address the issues of what services are included in Home Help Services and Expanded Home Help Services, and how such services are assessed.

In part, ASM 101, pages 1-3 of 5, provides:

Payment Services Home Help

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.
- Light housecleaning.

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 or her daughter agrees to assist 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.

* * *

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. (Emphasis added).

Moreover, ASM 120, pages 2-4 of 5, 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

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- 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.

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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 assisted 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 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.

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.

* * *

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.

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.

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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 adjoined 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).

Appellant's Adult Services worker (ASW) ██████████ stated she did a ██████ months assessment/redetermination of Appellant's case on ██████████. The ASW stated she met with the Appellant's mother ██████████ for the redetermination. The Appellant and ██████████ were present in the home at the time, but they did not participate in the assessment/redetermination. The ASW went over the Appellant's ADLs and IADLs with the Appellant's mother.

The ASW stated she increased the amount of time approved for dressing, because the Appellant drools on his shirt and it has to be changed several times per day. The ASW stated the time for Appellant's grooming was decreased. Appellant's mother indicated she shaves, and cuts the Appellant's hair and nails. The ASW stated they have guidelines they go by in determining how much time to authorize for various tasks. She determined it did not take a ██████ for the grooming, and the time was cut to ██████ minutes to allow for daily shaving.

The ASW stated she decreased the time for toileting because Appellant wears diapers/pull-ups, and can toilet himself if he is taken to the bathroom. The ASW stated she also reduced the time for eating as the Appellant can feed himself, he just needs his food cut up. The ASW stated for meal preparation the time was prorated or cut in half as there is a shared household and all family members follow a GERD diet. (Note: despite policy, the amount of time for laundry was not prorated). The ASW questioned the Appellant's mother as to the amount of time it took to provide the various services for the Appellant, but she stated she could not give the exact times as she did not time

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how long each task took to complete. Appellant's mother also told the ASW that Appellant needed supervision with certain tasks, but the ASW advised that the policy does not pay for supervision, only hands on assistance.

Thereafter, based on the redetermination DHS approved the current authorized amount of HHS, ██████ hours and █ minutes of services per ██████, for a total care cost of ██████. On ██████, the Department issued an Advance Negative Action Notice to Appellant notifying him that his EHHS hours would be reduced to ██████ hours and █ minutes for a total monthly care cost of ██████ effective ██████. The Notice stated that "After the most recent assessment, dressing has been increased and grooming, toileting, eating and meal prep have been decreased. Client resides in a shared household; therefore, meal prep per policy must be decreased to half. Provider stated the household follows a GERD diet so there are not any special meal preps.

Appellant's mother presented historical medical documentation regarding the Appellant's diagnoses, which supports the Appellant's need for EHHS. (See Exhibit 1). The Appellant's mother testified at the hearing that she did not believe the ASW conducted a proper assessment of the Appellant during the ██████ home visit. The Appellant's mother claimed the notes prepared by the ASW for the ██████ assessment were not correct.

Appellant's mother characterized the ASW as confrontational. She indicated the ASW demanded to see the Appellant's medications. Appellant's mother said when she went into the kitchen to get the Appellant's medications the ASW followed her, and "invaded" her personal space. Appellant's mother said the ASW ended up with her right shoulder up against the right side of her back. Appellant's mother said the ASW was intimidating, she was very uncomfortable, and she felt the ASW had trapped her in the kitchen.

Appellant's mother acknowledged that after they left the kitchen she was asked about the Appellant's clothing. She said she told the ASW about the Appellant's drooling and him needing to have his shirts changed during the day. Appellant's mother said at that point the ASW scoffed at her so she didn't say anything more about his drooling. She then acknowledged she had told the ASW she takes the Appellant to the bathroom every ██████ hours to urinate in the toilet. Appellant's mother said the ASW did not believe her and scoffed at her again. She said she also told the ASW the Appellant wears pull-ups not diapers. The Appellant's mother said she told the ASW the Appellant couldn't walk; he has fragile bones, and uses a wheelchair. She said the ASW then got in her face and demanded to know the Appellant's diagnoses. The Appellant's mother concluded her testimony by indicating that there was no assessment or redetermination done of the client, that the ASW was just intimidating and confrontational.

The preponderance of the evidence presented in this case demonstrates that the reduction of Expanded Home Help Services in this case was proper. The reductions made are adequately supported by the information gathered by the ASW during the home visit on ██████. The testimony of the Appellant's mother to the effect

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that the ASW did not conduct a proper redetermination or assessment is not credible and is not supported by the preponderance of the evidence presented in this case.

Accordingly, for the reasons discussed above, the Department's decision must be affirmed.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that, the Department acted properly in reducing Appellant's Expanded Home Help Services.

IT IS THEREFORE ORDERED THAT:

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

William D Bond

William D. Bond
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

WDB/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.