

**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.** 2014-2099 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 a request for a hearing filed on behalf of Appellant/Petitioner.

After due notice, a hearing was held on ██████████ ██████████ Appellant's mother and legal guardian, and ██████████ Appellant's father and standby guardian appeared and testified on Appellant's behalf. ██████████, Appeals Review Officer, represented the Department of Community Health. ██████████, a registered nurse for the Department's Home Help Program, and ██████████, Adult Services Worker (ASW), appeared as witnesses for the Department.

**ISSUE**

Did the Department properly deny Appellant 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 multiple congenital abnormalities, profound mental retardation, tracheostomy, and incontinence. (Exhibit A, pp. 17, 22-23, 51 and testimony).
2. Appellant's parents are his legal guardians. (Exhibit A, pp. 5-8 and testimony).
3. Appellant had been attending special education services during the day and his school providers were able to provide needed care during the day while his parents were at work. In addition, he had been receiving Home

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Help Services (HHS) through the Department with his mother providing the services. (Exhibit A, pp. 15, 19, 20, 21, 23 and testimony).

4. On [REDACTED], DHS requested Expanded Home Help Services (EHHS) on behalf of the Appellant, because he had aged out of the special education program and is in need of specialized care at home during the day while his parents are at work. The total amount requested for EHHS was [REDACTED] hours and [REDACTED] minutes per month for a total care cost of [REDACTED]. Appellant mother was to provide [REDACTED] hours and [REDACTED] minutes per month at [REDACTED] per hour for a total cost of [REDACTED], and Residential Opportunities Inc. an agency provider was to provide [REDACTED] hours and [REDACTED] minutes for a total at [REDACTED] per hour for a total cost of [REDACTED]. (Exhibit A, pp. 22-25, 57-58).
5. Specifically, Appellant was to be provided assistance with bathing, grooming, dressing, toileting, transferring, eating, mobility, taking medications, housework, laundry, shopping, meal preparation, and specialized skin care. (Exhibit A, pp. 24-25, 57-58).
6. [REDACTED] was assigned to Appellant's case as a result of the request for EHHS and she got involved to review the client's specific need for services. (Exhibit A, pp. 27-61 and testimony).
7. As part of her assignment, [REDACTED] reviewed the records sent to her by the local DHS office and she interviewed the Appellant's ASW, the Appellant's mother, and the agency worker. (Exhibit A, pp. 27-61 and testimony).
8. Following her review, [REDACTED] made a number of recommendations regarding Appellant's need for services. However, the matter was returned to the local DHS ASW worker to determine the total care costs based on her recommendations. The amount determined by the local ASW ended up being less than the [REDACTED] required for Department approval, so no further action was taken by the Department because the ASW's supervisor could approve the amount as it was under the [REDACTED] threshold. (Exhibit A, p. 31, and testimony).
9. Following the review by [REDACTED], DHS approved the current authorized amount of HHS, [REDACTED] hours and [REDACTED] minutes of services per month, for a total care cost of [REDACTED]. (Exhibit A, pp. 21, 26 and testimony).
10. On [REDACTED] an Adequate Action Notice was sent to the Appellant stating that after a review of this case by the Department of Community Health, Extended Home Help Services will not be authorized. The effective date of the reduction was identified as [REDACTED] (Exhibit A, pp. 10-14).

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11. On [REDACTED], the Michigan Administrative Hearing System (MAHS) received the Request for Hearing in this matter. (Exhibit A, pp. 4-8).

**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.

Adult Services Manual 101 (11-1-2011) (hereinafter "ASM 101") and Adult Services Manual 120 (5-1-2012) (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 1-2 of 4, 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**

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**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 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.

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
- 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.

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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. 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 it's [sic] 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.

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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 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.

Appellant's Adult Services worker (ASW) stated he did an assessment of Appellant's case in ██████████. The ASW stated Appellant had "graduated from high school" and accordingly, he had to obtain chore services for the Appellant from Residential Opportunities Inc. an agency provider who could provide services in the Appellant's home during the day while the Appellant's parents were at work. The ASW stated that by obtaining the chore services from the agency the Appellant's care costs rose above ██████████ and he needed to obtain approval from the MDCH.

On ██████████ Appellant's ASW along with his Adult Services Supervisor requested approval for EHHS for the Appellant. The ASW stated the total amount requested for EHHS was ██████ hours and █████ minutes per month for a total care cost of ██████████. Appellant's mother was to provide █████ hours and █████ minutes per month at █████ per hour for a total cost of ██████████, and Residential Opportunities Inc. an agency provider was to provide █████ hours and █████ minutes for a total at █████ per hour for a total cost of ██████████.

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The matter was assigned for review to [REDACTED] RN, MDCH Home Help Program. On [REDACTED] completed her review and made a number of recommendations regarding Appellant's need for services. However, [REDACTED] stated the matter was returned to the local DHS Office for the ASW worker to determine the total care costs based on [REDACTED] recommendations. [REDACTED] stated the amount determined by the local ASW ended up being less than the [REDACTED] required for Department approval, so no further action was taken by the Department because the ASW's supervisor could approve the amount of services since it was under the [REDACTED] threshold.

During her testimony [REDACTED] pointed out that DHS had only approved [REDACTED] days for suctioning for the Appellant's mother, when actually she should have been approved for [REDACTED] days per week at [REDACTED] minutes. [REDACTED] stated adding the additional time for the mother's suctioning this would increase the amount to be approved for services. [REDACTED] stated she would agree with a change to allow for [REDACTED] minutes per day [REDACTED] days a week for the mother to provide suctioning for the Appellant. [REDACTED] stated this would increase the total amount to be approved by [REDACTED] [REDACTED] [REDACTED] concluded by stating that the number of hours she recommended was based on the information provided to her at the time of her review by the ASW, the mother, and the agency worker concerning what was being done to care for the Appellant.

Thereafter, based on the recommendations made by [REDACTED] the local DHS office approved the current authorized amount of HHS, [REDACTED] hours and [REDACTED] minutes of services per month, for a total care cost of [REDACTED]. On [REDACTED] DHS sent the Appellant an Adequate Action Notice stating that after a review of this case by the Department of Community Health, Extended Home Help Services will not be authorized.

Appellant's parents testified that they did not agree with the time table for some of the Appellant's tasks. Appellant's father stated Appellant is not mobile, he has an issue with his left foot requiring therapy that happened just last week. Appellant's father acknowledged that the Appellant was tube fed, but stated there is preparation time for his tube feeding, as they get a powder mix that needs to be measured and mixed so that it doesn't clump up. He stated it probably takes a [REDACTED] hour [REDACTED] times per day to get the food into the Appellant not including clean-up time. Accordingly, he felt that meal preparation time should be added to the services to be provided. Appellant's father stated that they don't have to shop for the Appellant's food, but there are a lot of prescriptions and medical supplies that they need to pick up for him at the pharmacy or [REDACTED].

Appellant's mother stated that when she talked with [REDACTED] she told [REDACTED] she had not thought about the various times needed for each task, but was told to provide her best guess for the times needed for each task. Appellant's mother stated since they were not approved for EHHS and the amount of funds were actually cut, she believes she did not do a good job in providing the information needed to determine the

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proper amount of services the Appellant should be authorized to receive. Appellant's mother acknowledged that CMH was currently paying the agency to provide services for the Appellant in the home. She stated the Agency was providing █████ hours of care in the home, but she did not know how much CMH was paying versus how much DHS was paying for home help services.

The preponderance of the evidence presented in this case demonstrates that the denial of Expanded Home Help Services in this case was not proper. Based upon the testimony of █████ alone, the amount authorized for HHS after her review by DHS was not proper because it only allowed for the mother to perform suctioning █████ minutes per day █████ days per week instead of █████ minutes per day █████ days per week. According to █████, this would increase the amount to be authorized per month by over █████. This would bring the total care cost over the threshold amount of █████ requiring approval by the Department. Also based upon the testimony of the parents additional time may need to be considered for meal preparation or shopping for prescription and medical supplies beyond the time allowed in this case for the shared household. Accordingly, a new assessment should be considered in this case. In any event, the preponderance of the evidence shows that the denial of Expanded Home Help Services as indicated in the Adequate Action Notice dated █████ was not proper, as the █████ authorized for HHS following █████ is not the correct amount based upon her review.

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

**DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that, the Department did not act properly in denying Appellant Expanded Home Help Services.

**IT IS THEREFORE ORDERED THAT:**

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

*William D Bond*

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

Date Signed: ██████████

Date Mailed: ██████████

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WDB/db

CC:



**\*\*\* 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.