

**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. 2014-34103 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 a request for a hearing filed by Appellant and his guardian.

After due notice, a hearing was held on ██████████ Appellant's mother and legal guardian, appeared and testified on Appellant's behalf. Appellant; ██████████, Appellant's sister; ██████████, Appellant's case manager at the ██████████; and ██████████ Executive Director at The ██████████ were also present or testified as witnesses for Appellant.

██████████, Appeals Review Officer, represented the Department of Community Health ("DCH" or "Department"). ██████████ an Adult Services Worker (ASW) at the ██████████ County Department of Human Services (DHS), testified as a witness for the Department.

ISSUE

Did the Department properly reduce Appellant's Home Help Services (HHS)?¹

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 Mohr Syndrome. (Respondent's Exhibit A, pages 14, 16).

¹Appellant has never received assistance with eating and such assistance was not part of the reduction challenged by Appellant in his request for hearing. (Petitioner's Exhibit 1, pages 1-5; Respondent's Exhibit A, page 22). However, during the hearing, the Department acknowledged that Appellant was ranked a "3" in eating during the most recent assessment after ASW ██████ found that Appellant's provider must cut his food. (Respondent's Exhibit A, page 17). Given that finding, the Department also acknowledged that assistance with eating should be added and its witness stated that such assistance, in the amount of 2 minutes per day, 7 days a week, will be added. (Testimony of ASW ██████). Appellant's representative stated that such an amount is acceptable. (Testimony of Appellant's representative).

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2. Appellant lives with his mother and she is both his plenary guardian and home help provider. (Respondent's Exhibit A, pages 7-8, 19).
3. Appellant has been receiving services through the [REDACTED], including Community Living Supports (CLS) and respite care services. (Testimony of [REDACTED]).
4. Appellant has also been receiving HHS through the Department in the amount of [REDACTED] hours and [REDACTED] minutes per month, with a total monthly care cost of [REDACTED]. (Respondent's Exhibit A, page 22).
5. Specifically, HHS were authorized for assistance with the tasks of bathing, grooming, dressing, toileting, taking medications, housework, laundry, shopping, and meal preparation. (Respondent's Exhibit A, page 22).
6. On [REDACTED], ASW [REDACTED] conducted a reassessment of Appellant's services in Appellant's home with Appellant and his mother/guardian/care provider. (Respondent's Exhibit A, pages 19-21).
7. On [REDACTED], the Department sent Appellant written notice that his HHS would be reduced to [REDACTED] on [REDACTED]. (Respondent's Exhibit A, pages 9-13).
8. The notice provided that the reduction was based on a proration of Appellant's assistance with housework, laundry, shopping and meal preparation due to the fact that Appellant lived in a shared household and a reduction of assistance in Activities of Daily Living (ADLs) due to the fact that Appellant is able to participate in his own care. (Respondent's Exhibit A, pages 10-11).
9. On [REDACTED], the Michigan Administrative Hearing System (MAHS) received the request for hearing filed by Appellant and his guardian in this matter. (Petitioner's Exhibit 1, pages 1-5).

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.

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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”) addressed the issues of what services are included in HHS and how such services are assessed.

For example, ASM 101 provides:

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.
- 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 [sic] 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.

* * *

Services not Covered by Home Help

- Supervising, monitoring, reminding, guiding, teaching or encouraging (functional assessment rank 2).
- Services provided for the benefit of others.

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- 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.

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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 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. Ms. Smith would be eligible to receive assistance with IADL's [sic] 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 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.

* * *

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.

ASM 120, pages 2-6 of 7

In this case, following a home visit and functional assessment, the Department decided to reduce Appellant's HHS from █████ hours and █████ minutes per month, with a total

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monthly care cost of ██████████, to ██████ hours and █████ minutes per month, with a total monthly care cost of ██████████. (Respondent's Exhibit A. pages 22-23).

Appellant challenges the reduction of HHS and each of the disputed tasks will be discussed below. Appellant also bears the burden of proving by a preponderance of the evidence that the Department erred in making its decision. Moreover, the undersigned Administrative Law Judge's jurisdiction is limited to reviewing the Department's decisions in light of the information it had at the time it made those decisions.

From the reasons discussed below, this Administrative Law Judge finds that Appellant has failed to meet his burden of proof in this case and that the Department's actions must therefore be affirmed.

Bathing

Appellant's assistance with bathing was reduced from █████ minutes per day, █████ days per week (██████ per month) to █████ minutes per day, █████ days a week (██████ per month). (Respondent's Exhibit A, pages 22-23).

According to ASW █████ notes and testimony, that reduction was based on Appellant's representative's reports that Appellant can physically perform the task and can be prompted to do so, although his provider must check to see that it is done properly. (Respondent's Exhibit A, pages 17, 19; Testimony of ASW █████).

In response, Appellant's representative testified that Appellant cannot bathe himself and, while she does not specifically recall what she reported during the home visit, she has always bathed Appellant and has to do so █████ a day because of the skin cream Appellant is prescribed. (Testimony of Appellant's representative). She also testified that Appellant will not bathe himself, even when prompted, and that the provider must do it. (Testimony of Appellant's representative).

With respect to bathing, Adult Services Manual 121 (5-1-2013) (hereinafter "ASM 121"), page 2 of 6, provides:

Bathing - helping with cleaning the body or parts of the body using a tub, shower or sponge bath; including getting a basin of water, managing faucets, soaping, rinsing and drying. helping shampoo hair.

- 1 No assistance required.
- 2 Bathes self with direction or intermittent monitoring. May need reminding to maintain personal hygiene.
- 3 Minimal hands-on assistance or assistive technology required to carry out task. Generally bathes self but needs some assistance with cleaning hard to reach

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areas; getting in/out of tub/shower. Client is able to sponge bath but another person must bring water, soap, towel. Client relies on a bath or transfer bench when bathing. The constant presence of another is not required.

- 4 Requires direct hand-on assistance with most aspects of bathing. Would be at risk if left alone.
- 5 Totally dependent on others in all areas of bathing.

Given that definition and the record in this case, Appellant has failed to meet his burden of proving by a preponderance of the evidence that the Department erred in reducing his assistance with bathing by █████ minutes per day.

This Administrative Law Judge's jurisdiction is limited to reviewing the Department's decisions in light of the information it had at the time it made those decisions and, in this case, while Appellant's representative does not recall what she said, ASW █████ notes and credible testimony demonstrate that Appellant's representative reported that Appellant was mostly independent in bathing at the time of the visit. The Department is justified in relying on what is reported and, in this case, it properly reduced Appellant's assistance with bathing based on the available information.

Grooming

Appellant's assistance with grooming was reduced from █████ minutes per day, █████ days per week (█████ per month) to █████ minutes per day, █████ days a week (█████ per month). (Respondent's Exhibit A, pages 22-23).

According to ASW █████ notes and testimony, that reduction was based a new ranking of "3" and Appellant's representative's reports that Appellant can physically perform the task when prompted to do so, although his provider must check to see that it is done properly. (Respondent's Exhibit A, pages 17, 19; Testimony of ASW █████).

In response, Appellant's representative testified that she does everything for Appellant with respect to grooming, including shaving him, brushing his hair and putting on deodorant. (Testimony of Appellant's representative). She also testified that she reported such assistance to ASW █████ and that, if she did not completely assist Appellant with all aspects of grooming, it would not get done. (Testimony of Appellant's representative).

With respect to dressing, ASM 121, page 2 of 6, states:

Grooming - Maintaining personal hygiene and a neat appearance; including the combing/brushing of hair; brushing/cleaning teeth, shaving, fingernail and toenail care.

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- 1 No assistance required.
- 2 Grooms self with direction or intermittent monitoring. May need reminding to maintain personal hygiene
- 3 Minimal hands-on assistance required. Grooms self but needs some assistance with activities of personal hygiene.
- 4 Requires direct hands-on assistance with most aspects of grooming. Would be at risk if left alone.
- 5 Totally dependent on others in all areas of grooming.

ASM 121, page 2 of 6

Per that definition, as well as ASM 101, page 5 of 5, supervising, monitoring, reminding, guiding, teaching or encouraging are not covered by the Home Help Program and, while it is undisputed that such assistance is required in this case, that assistance does not justify more HHS.

Appellant's representative also testified that Appellant is totally dependent on her for grooming. However, given Appellant's undisputed physical abilities and his capacity to perform other tasks, the undersigned Administrative Law Judge finds Appellant's representative's claim regarding total dependence in grooming to be unsupported. While it may be easier to simply groom Appellant rather than guide or encourage him to do so himself, it does not appear that direct hands-on assistance is required in all or most areas of grooming. Therefore, the Department properly ranked Appellant a "3" in that task and reduced his HHS to properly reflect the minimal hands-on assistance he requires.

Dressing

Appellant's assistance with dressing was reduced from █ minutes per day, █ days per week (█ per month) to █ minutes per day, █ days a week (█ per month). (Respondent's Exhibit A, pages 22-23).

According to ASW █ notes and testimony, that reduction was based on a new ranking of "3" in dressing and Appellant's representative's reports that Appellant can mostly dress himself, but that the provider needs to select and monitor for appropriate clothing, in addition to assisting with zippers and buttons. (Respondent's Exhibit A, pages 17, 19; Testimony of ASW █).

In response, Appellant's representative testified that, in addition to checking that Appellant is wearing appropriate clothing, she also has to assist Appellant with buttons, zippers, socks and shoes. (Testimony of Appellant's representative).

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With respect to dressing, ASM 121, page 3 of 6, states:

Dressing - Putting on and taking off garments; fastening and unfastening garments/undergarments, assisting with special devices such as back or leg braces, elastic stockings/garments and artificial limbs or splints.

- 1 No assistance required.
- 2 Client is able to dress self but requires reminding or direction in clothing selection.
- 3 Minimal hands-on assistance or assistive technology required. Client unable to dress self completely (i.e. tying shoes, zipping, buttoning) without the help of another person or assistive device.
- 4 Requires direct hands on assistance with most aspects of dressing. Without assistance would be inappropriately or inadequately dressed.
- 5 Totally dependent on others in all areas of dressing.

Given the above definition, Appellant was properly ranked a “3” in dressing as he only requires minimal hands-on assistance with that task, such as tying shoes, zipping, and buttoning, and the Department properly authorized assistance with dressing based on that ranking and needs. Moreover, to the extent that Appellant also seeks HHS due to the need for the provider to monitor his clothing selection, policy provides that such assistance is not covered by the Home Help Program, See ASM 101, page 5 of 5.

Toileting

Appellant’s assistance with toileting was reduced from █ minutes per day, █ days per week (█ per month) to █ minutes per day, █ days a week (█ per month). (Respondent’s Exhibit A, pages 22-23).

According to ASW █ notes and testimony, that reduction was based on Appellant’s representative’s report that Appellant only needs assistance with wiping after bowel movements. (Respondent’s Exhibit A, pages 17, 19; Testimony of ASW █).

In response, Appellant’s representative testified that, while she only assists Appellant after bowel movements, she has recently learned that Appellant does not perform this task properly, like an adult male would, and that Appellant has to learn how to do so. (Testimony of Appellant’s representative).

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ASM 121, page 1 of 6, defines toileting as follows:

Toileting - helping on/off the toilet, commode or bedpan; emptying commode, bed pan or urinal, managing clothing, wiping and cleaning body after toileting, cleaning ostomy and/or catheter tubes/receptacles, applying diapers and disposable pads. May also include catheter, ostomy or bowel programs.

- 1 No assistance required.
- 2 Verbal direction, prompting or reminding is required.
- 3 Minimal hands-on assistance or assistive technology needed with some activities. The constant presence of another person while toileting is not necessary.
- 4 The client does not carry out most activities without human assistance.
- 5 Totally dependent on others in all areas of toileting.

Given that definition, the Department properly reduced Appellant's assistance with toileting to reflect the minimal hands-on assistance he actually requires. Moreover, while Appellant's representative also seeks assistance in teaching Appellant how to perform this task properly, services such as guiding, teaching or encouraging are not covered by the Home Help Program. See ASM 101, page 5 of 5. Such assistance may be covered by the CLS Appellant is also receiving, but, regardless, the Department properly reduced Appellant's HHS with toileting in this case given the available information.

Taking Medications

Appellant's assistance with taking medications was reduced from █ minutes per day, █ days per week (█ per month) to █ minutes per day, █ days a week (█ per month). (Respondent's Exhibit A, pages 22-23).

According to ASW █ notes and testimony, that reduction was based on Appellant's representative's report that Appellant is able to take his pills, but needs the provider to apply a medicated cream twice a day. (Respondent's Exhibit A, pages 17, 19; Testimony of ASW █).

In response, Appellant's representative testified that Appellant cannot take medications independently and that she has to prepare all medications and monitor Appellant while he takes them. (Testimony of Appellant's representative).

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With respect to taking medications, ASM 121, page 4 of 6, states:

Taking Medication - Taking prescribed and/or over the counter medications

- 1 No assistance required.
- 2 Client is able to take all medications but needs reminding or direction.
- 3 Client is able to take all medication if someone assists in measuring dosages or prepares administration schedule.
- 4 Client is able to take some medication if another person assists in preparation, but needs someone to assist in administering other medications.
- 5 Totally dependent on another. Does not take medication unless someone assists in administering.

Here, Appellant's need for assistance with taking medications is essentially undisputed and the reduced time authorized properly accounts for the hands-on, direct assistance that Appellant requires. Moreover, while it is also undisputed that Appellant must be directed to take his medications and supervised or monitored while taking them, such assistance is not covered by the Home Help Program. See ASM 101, page 5 of 5. Accordingly, the Department's decision with respect to taking medications must also be affirmed.

Housework, Laundry, Shopping, and Meal Preparation

The Department also reduced the HHS authorized for assistance with the IADLs of meal preparation, shopping, laundry and light housework pursuant to the Department's proration policy.

As described above, that policy states: "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 121, page 5 of 7. Moreover, the above policy also identifies maximum allowable hours for those four IADLs, including █ hours a month for shopping; █ hours a month for light housework; █ hours a month for laundry, and █ hours a month for meal preparation. See ASM 121, page 5 of 7.

Appellant lives in a shared household with his mother (Respondent's Exhibit A, page 19), but his services had not been previously prorated (Respondent's Exhibit 22, page 22; Testimony of ASW █). Accordingly, ASW █ prorated his assistance with the four IADLs and authorized one-half of the maximum amount allowed by policy. (Respondent's Exhibit A, page 23; Testimony of ASW █).

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In response, Appellant's representative does not dispute that Appellant lives in a shared household with another adult. (Testimony of Appellant's representative). However, she does argue that Appellant's shopping and meal preparation are completed separately. (Testimony of Appellant's representative). She also noted that Appellant has been receiving services for years and that they have never been prorated. (Testimony of Appellant's representative).

The above policy does provide that hours for assistance with IADLs need not be prorated in shared living arrangements "where it can be clearly documented that IADLs for the eligible client are completed separately from others in the home" and examples of such a separation include shopping and meal preparation where the client has special dietary needs and food is purchased from specialty stores. ASM 121, page 5 of 7. However, there has been no such clear documentation in this case. Appellant does not have any special dietary needs and, at most he and his provider eat separately out of choice. Moreover, while Appellant's groceries are paid for separately, the shopping is still completed at the same time.

To the extent the Department failed to follow its proration policy before, it appears to have erred in favor of Appellant and, regardless, the undersigned Administrative Law Judge's jurisdiction is limited to reviewing the current decision to reduce services based on the available information.

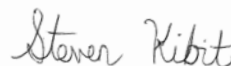
With respect to that decision, given the shared household and the lack of clear documentation that IADLs for Appellant are completed separately from others in the home, the Department was bound to follow the mandated policy and prorate the HHS time and payment for all IADLs, except taking medication, by at least one-half. Appellant was authorized for half of the maximum amount of HHS allowed by policy for meal preparation, shopping, laundry and light housework, and the Department's decision with respect to those tasks must therefore be sustained.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that, the Department properly reduced Appellant's HHS.

IT IS THEREFORE ORDERED THAT:

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



Steven J. Kibit
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

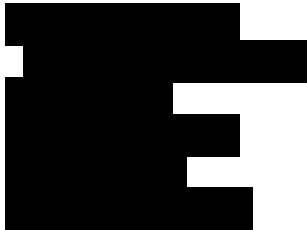
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***** NOTICE *****

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.