

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. 2014-34222 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 Appellant's request for a hearing.

After due notice, a hearing was held on ██████████ a representative from Appellant's care provider agency, appeared and testified on Appellant's behalf. Appellant also testified on his own behalf. ██████████ Appeals Review Officer, represented the Department of Community Health ("DCH" or "Department"). ██████████ Adult Services Worker (ASW), and ██████████, Adult Services Supervisor, from the ██████████ County Department of Human Services (DHS) testified as witnesses for the Department.

ISSUE

Did the Department properly reduce Appellant's 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 malignant human immunodeficiency virus (HIV); status post cerebrovascular accident; hepatitis B; chronic obstructive pulmonary disease; degenerative arthritis; recurrent lumbar pain; weight loss; anxiety; and activity-related soft tissue disorder (ASTD). (Respondent's Exhibit A, page 12).
2. Appellant had been receiving HHS through the Department in the amount of ██████ hours and ██████ minutes per month, with a total monthly care cost of ██████████ (Respondent's Exhibit A, page 16).

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3. Specifically, assistance had been authorized for the tasks of bathing, grooming, dressing, toileting, eating, transferring, mobility, taking medications, light housework, laundry, shopping, and meal preparation. (Respondent's Exhibit A, page 16).
4. On [REDACTED] ASW [REDACTED] conducted an annual assessment of Appellant's services in Appellant's home with Appellant and his care provider at that time. (Respondent's Exhibit A, page 10).
5. Appellant's services remained the same after that assessment. (Respondent's Exhibit A, page 10; Testimony of ASW [REDACTED]).
6. Following that home visit, ASW [REDACTED] received a new medical needs form signed by Appellant's doctor. (Testimony of [REDACTED]).
7. The medical needs form was signed by Appellant's doctor on [REDACTED] and, on the form, Appellant's doctor circled the tasks of bathing, grooming, dressing, taking medications, meal preparation, shopping, laundry, and housework when asked to certify a medical need for assistance. (Respondent's Exhibit A, page 15).
8. ASW [REDACTED] did not reduce or take any action with respect to Appellant's services upon receiving the medical needs form. (Testimony of ASW [REDACTED]).
9. On [REDACTED] Appellant came into his local [REDACTED] County DHS office to enroll a new provider. (Respondent's Exhibit A, page 10).
10. Appellant was also switching from an individual provider to a provider agency at that time. (Respondent's Exhibit A, page 10).
11. After the new provider was enrolled, ASW [REDACTED] decided to reduce Appellant's services. (Respondent's Exhibit A, page 10; Testimony of ASW [REDACTED]).
12. Specifically, he removed assistance with eating, toileting, transferring and mobility from Appellant's HHS and reduced the time authorized for assistance with housework, laundry and shopping. (Respondent's Exhibit A, pages 16-17).
13. No new assessment or discussion of Appellant's services and need for assistance was held during the office visit. (Testimony of ASW [REDACTED]).
14. Instead, the termination of assistance with eating, toileting, transferring and mobility was based on ASW [REDACTED] observations during the office visit that Appellant could ambulate, transfer and use his hands independently, in addition to the fact that Appellant's doctor failed to

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indicate a need for assistance with eating, toileting, transferring or mobility on the medical needs form. (Testimony of ASW ██████████).

15. ASW ██████████ also reduced assistance with housework, laundry and shopping by switching the days per week for assistance with those tasks to ██████████ days a week, from ██████████ day a week, and using the times per day recommended by the Department's computer system. (Testimony of ASW ██████████).
16. ASW ██████████ further testified that he had no specific basis for switching assistance with housework, laundry and shopping to ██████████ days a week or reducing the overall assistance approved for those tasks, but he believed the required assistance could be provided in the reduced time. (Testimony of ASW ██████████).
17. ASW ██████████ then generated an Advance Negative Action Notice and served it on Appellant. (Respondent's Exhibit A, page 10; Testimony of ASW ██████████).
18. That notice indicated that Appellant's services would be reduced to ██████████ hours and ██████████ minutes per month, with a total monthly care cost of ██████████. (Respondent's Exhibit A, pages 5-8).
19. The notice also identified the effective date of the reduction as ██████████ and stated that the reduction was being made to reflect Appellant's current needs. (Respondent's Exhibit A, pages 5-8).
20. On ██████████ the Michigan Administrative Hearing System (MAHS) received the request for hearing filed by Appellant in this matter. (Respondent's Exhibit A, page 4).

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 HHS and how such services are assessed.

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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.

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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.
- 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.

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- 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.

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- 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 if assessed at a level 3 or greater.

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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.

Complex Care Needs

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.

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- 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.

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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, while Appellant's services remained the same after the most recent comprehensive assessment and the receipt of an updated medical needs form, the Department reduced Appellant's HHS after a subsequent office visit. Specifically, ASW ██████████ removed assistance with eating, toileting, transferring and mobility from Appellant's HHS while also reducing the time authorized for assistance with housework, laundry and shopping.

According to ASW ██████████, the termination of certain services were based on his observations during the office visit that Appellant could ambulate, transfer and use his hands independently, in addition to the fact that Appellant's doctor failed to indicate a need for assistance with eating, toileting, transferring or mobility on the medical needs form.

ASW ██████████ also testified that the reductions in housework, laundry and shopping were based on the fact that he believed that the assistance could be provided for those tasks three days a week at the time per day recommended by the Department's RTS. However, ASW ██████████ further testified that he had no specific basis for those beliefs and that he did not discuss or reassess Appellant's needs in those ██████████ areas.

In response, Appellant testified that nothing has changed with respect to his medical conditions or need for assistance since the comprehensive assessment performed on ██████████. Appellant and his representative also testified that they believe the reduction was based solely on the fact that Appellant was switching to a care provider agency, which is paid at a higher rate than an individual provider.

Appellant bears the ultimate burden of proving by a preponderance of the evidence that the Department erred in reducing his services. However, the Department also bears the burden of going forward and establishing that its action was proper and in accordance with the applicable law and policy.

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Here, while parts of the Department's actions may have been proper, it is undisputed that no assessment was performed prior to the reduction of services and that the ASW reduced assistance with some tasks, such as housework, laundry and shopping, without any explicable or justifiable basis. ASW [REDACTED] did not discuss those tasks with Appellant, reassess Appellant's needs in those areas, or describe any reason for the reductions at the time they were made. Similarly, during the hearing, he acknowledged that he had no specific basis for the reductions in housework, laundry or shopping and just believed that the reduced time would be sufficient.

Appellant also credibly testified during the hearing that his needs have not changed since the most recent comprehensive assessment and that he still requires the same amount of services as before.

Given that credible testimony, in addition to the lack of any basis for parts of the reduction, the undersigned Administrative Law Judge finds that the Department erred in reducing Appellant's services and that its decision in this case 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 improperly reduced Appellant's HHS.

IT IS THEREFORE ORDERED THAT:

The Department's decision is **REVERSED** and it must initiate a reinstatement of Appellant's HHS at the previous amount.

Steven Kibit

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

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

SK/db

cc: [REDACTED]

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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.