

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF:

Docket No. 2014-35649 HHS

██████████
Appellant.
_____ /

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 C.F.R. § 431.200 *et seq.*, upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████ ██████████ appeared on the Appellant's behalf. ██████████ Appeals Review Officer, appeared on behalf of the Department of Community Health. ██████████ Adult Services Worker (ASW), from the ██████████ County DHS appeared as a witness for the Department. ██████████, Adult Services Supervisor was also present but did not testify.

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 receiving HHS. (Exhibit A, pp. 2, 16, 18 and testimony).
2. Appellant has been diagnosed with severe mental retardation and cerebral palsy. (Exhibit A, pp. 9, 20).
3. On ██████████, ASW T ██████████ did a face-to-face home visit with the Appellant and her provider and completed a comprehensive reassessment of the Appellant's need for services. The ASW redetermined the tasks to be authorized for Appellant's HHS. (Exhibit A, pp. 15, 17-18 and testimony).
4. On ██████████, the Department issued an Advance Negative Action Notice to Appellant notifying her that her HHS monthly care cost would be reduced to ██████████. Appellant's eating would be reduced from the budget, and instead the provider would be paid for cutting up the Appellant's food

████ minutes per day █████ days per week, effective █████. (Exhibit A, pp. 10-14 and testimony).

5. On █████, MAHS received Appellant's Request for Hearing. (Exhibit A, p. 4-7).

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") address the issues of what services are included in Home Help Services and how such services are assessed. ASM 101 states in part:

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 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. [ASM 101, pp. 1-2 of 5, emphasis added].

Services not Covered by Home Help Services

Home help services must **not** be approved for the following:

- Supervising, monitoring, reminding, guiding, teaching or encouraging (functional assessment rank 2). [ASM 101, p. 5 of 5].

ASM 120 states in part:

INTRODUCTION

The DHS-324, Adult Services Comprehensive Assessment is the primary tool for determining need for services. The comprehensive assessment

must be completed on **all open independent living services cases**. ASCAP, the automated workload management system, provides the format for the comprehensive assessment and all information must be entered on the computer program.

Requirements

Requirements for the comprehensive assessment include, but are not limited to:

- A comprehensive assessment will be completed on all new cases.
- A face-to-face contact is required with the client in his/her place of residence.
- The assessment may also include an interview with the individual who will be providing home help services.
- A new face-to-face assessment is required if there is a request for an increase in services before payment is authorized.
- A face-to-face assessment is required on all transfer-in cases before a payment is authorized.
- The assessment must be updated as often as necessary, but **minimally** at the six month review and **annual** redetermination.
- A release of information must be obtained when requesting documentation from confidential sources and/or sharing information from the department record.
 - Use the DHS-27, Authorization To Release Information, when requesting client information from another agency.
 - Use the DHS-1555, Authorization to Release Protected Health Information, if requesting additional medical documentation. This form is primarily used for APS cases.
- Follow rules of confidentiality when home help cases have companion adult protective services cases; see SRM 131, Confidentiality.

* * *

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.

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 level 3 ranking 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.

* * *

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, 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.

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. [ASM 120, pp. 1-5 of 7, emphasis added].

The testimony and evidence presented at the hearing demonstrated that the ASW properly redetermined the Appellant's needs for home help services based on the information she was provided by the Appellant's provider during the comprehensive reassessment. ASW ██████ stated she met with the Appellant and her mother/guardian who was her provider in their apartment on ██████. The Appellant was observed walking about the home without the use of any assistive devices. Appellant was unable to participate in the in the assessment due to her severe mental condition.

The ASW stated the Appellant's mother reported that the Appellant attended ██████ day treatment program daily from ██████ to ██████. The ASW stated the Appellant's mother reported the Appellant did not take any medications and did not use any adaptive equipment. She further stated that the Appellant's mother reported that the Appellant was able to physically eat on her own at home and at school, but sometimes cannot physically cut up her foods. The ASW agreed that the Appellant's mother/provider would be paid for cutting up the Appellant's meals. During the assessment the Appellant's mother reported she had been in the hospital for one week, and the ASW advised she would not be paid for that week as she was unavailable to care for the Appellant while in the hospital.

The ASW stated on ██████████, the Department issued an Advance Negative Action Notice to Appellant notifying her that her HHS monthly care cost would be reduced to ██████████. Appellant's eating would be reduced from the budget, and instead the provider would be paid for cutting up the Appellant's food ██████████ minutes per day ██████████ days per week, effective ██████████.

The Appellant's mother testified at the hearing that on the day of the assessment she had just gotten out of the hospital and was under the influence of a lot of medications. Appellant's mother said when asked if the Appellant could eat on her own she just replied yes. She stated the Appellant is severely physically and mentally impaired and can't hold a spoon. Appellant's mother said the Appellant can eat finger food, but she must feed her with soup, yogurt or anything requiring the use of a spoon. Appellant's mother said she wasn't mentally prepared for the assessment, and she was not of sound mind due to the medications she was on. Appellant's mother could not give an accounting of how much time was needed to assist the Appellant with eating. She stated there has been no change in the Appellant's condition since the previous assessments.

The Department presented credible evidence to show that at the time the Appellant's HHS was reduced, the information provided by Appellant's mother/guardian supported the reduction in the Appellant's HHS. The policy quoted above dictates that the needed services are determined by the comprehensive assessment conducted by the adult services specialist. The preponderance of the evidence shows that the ASW properly determined the needed services based upon the information she had at the time of the reassessment. Despite the testimony of the Appellant's mother, there was no mention at the time of the assessment that she was under the influence of any medications, or that she was not mentally prepared for the assessment at that time. Accordingly, the Department's decision must be sustained.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

William D Bond

William D. Bond
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Community Health

Date Signed: ██████████

Date Mailed: ██████████

[REDACTED]
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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.