

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

P.O. Box 30763, Lansing, MI 48909
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IN THE MATTER OF:

Docket No. 2014-35652 HHS

██████████

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Appellant.

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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 ██████████, Appellant's niece, appeared and testified on Appellant's behalf. Appellant also testified on her 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 deny Appellant's request for additional 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 a stroke/cerebrovascular accident (CVA); congestive heart failure (CHF); and urinary incontinence. (Respondent's Exhibit A, pages 6, 8).
2. Appellant has been receiving HHS through the Department in the amount of ██████ hours per month, with a total monthly care cost of ██████████ (Respondent's Exhibit A, page 16).
3. Specifically, Appellant is authorized for assistance with the tasks of bathing, grooming, toileting, taking medications, housework, laundry, shopping, and meal preparation. (Respondent's Exhibit A, page 16).
4. In ██████████, Appellant injured her hip and was hospitalized. (Respondent's Exhibit A, page 11; Testimony of Appellant's representative).

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5. Appellant and her representative then requested that additional HHS be authorized upon her return from the hospital. (Respondent's Exhibit A, page 11; Testimony of Appellant's representative).
6. At the time of that request, ASW ██████ had recently been assigned Appellant's case. (Testimony of ASW ██████).
7. ASW ██████ sent Appellant a new medical needs form to be filled out by her doctor and scheduled a reassessment in Appellant's home. (Respondent's Exhibit A, page 11).
8. Appellant's doctor completed and signed the medical needs form on ██████ and, in that form, he indicated that Appellant has a medical need for assistance with all personal care activities. (Respondent's Exhibit A, page 17).
9. On ██████, ASW ██████ completed a home visit and reassessment with Appellant and Appellant's representative. (Respondent's Exhibit A, page 13).
10. That visit and assessment was the first time ASW ██████ had assessed Appellant. (Testimony of ASW ██████).
11. During that assessment, Appellant and her representative reported that Appellant had fractured her hip and was undergoing physical therapy. (Respondent's Exhibit A, page 13; Testimony of ASW ██████).
12. Appellant was in a wheelchair and she reported that, due to instability, they now mostly used the wheelchair inside the home. (Respondent's Exhibit A, page 13; Testimony of ASW ██████).
13. The provider also assists Appellant in getting in-and-out of the shower. (Respondent's Exhibit A, page 13; Testimony of ASW ██████).
14. They further reported that Appellant's provider assists her with dressing and putting on pants. (Respondent's Exhibit A, page 13; Testimony of ASW ██████).
15. Appellant and his representative also reported that the Appellant's provider is there most of the day now and that Appellant remains in bed when home alone. (Respondent's Exhibit A, page 13; Testimony of ASW ██████).
16. Appellant uses diapers and she and her representative reported that her provider changes her diapers three times a day. (Respondent's Exhibit A, page 13; Testimony of ASW ██████).

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17. Following the assessment, ASW ██████ did not update or adjust Appellant's rankings with any new information regarding Appellant's health or needs. (Respondent's Exhibit A, pages 9-10; Testimony of ASW ██████).
18. ASW ██████ did attempt to contact Appellant's doctor on two occasions without success. (Respondent's Exhibit A, pages 13-15; Testimony of ASW ██████).
19. ASW ██████ then determined that Appellant's services should remain the same. (Testimony of ASW ██████).
20. On ██████ ASW ██████ sent Appellant a Services Payment Approval Notice providing that Appellant's services would remain the same. (Respondent's Exhibit A, page 5).
21. However, that notice also mistakenly stated that Appellant was only approved for ██████ per month instead of the ██████ she was actually approved for. (Respondent's Exhibit A, page 5; Testimony of ASW ██████).
22. The error regarding Appellant's HHS payments was corrected on ██████. (Respondent's Exhibit A, page 18).
23. 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. For example, ASM 101 provides:

Home help services are non-specialized personal care service activities provided under the independent living

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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.

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.

Complex Care

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.

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- Catheters or leg bags.
- Colostomy care.
- Bowel program.
- Suctioning.
- Specialized skin care.
- Range of motion exercises.
- Dialysis (In-home).
- Wound care.
- Respiratory treatment.
- Ventilators.
- Injections.

* * *

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.
- 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.

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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

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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.

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.
- 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.

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.

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In this case, following a hip injury and hospitalization, Appellant requested additional HHS. An in-home assessment was then performed and the Department subsequently denied the request for additional HHS.

Appellant now appeals that denial and, in doing so, bears the burden of proving by a preponderance of the evidence that the Department erred in denying her request.

Here, based on the undisputed record, Appellant and her representative have met that burden of proof and the Department's decision must be reversed. For example, Appellant is clearly entitled to assistance with the task of dressing and HHS for that task should have been added. Appellant and her provider reported during the assessment that Appellant's provider provides her with hands-on assistance with dressing while ASW ██████ testified during the hearing that she agreed with those reports and erred by not adding assistance with dressing.

In addition to assistance with dressing, Appellant may also be entitled to other HHS. She underwent a significant injury and changes in her medical needs, such as now requiring the use of a wheelchair in the home. The assessment performed in this case, however, failed to reflect those changes and ASW ██████ did not even update the rankings, despite a clear need to do so for some tasks, such as mobility and transferring, or properly determine whether assistance with other tasks should have been added.

Given the undisputed error made in denying the request for assistance with dressing and the otherwise inadequate assessment in this case, the undersigned Administrative Law Judge finds that the Department erred in denying Appellant's request for additional HHS. The Department must therefore reassess Appellant and authorize all appropriate services.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that, the Department improperly denied Appellant's request for additional HHS.

IT IS THEREFORE ORDERED THAT:

The Department's decision is **REVERSED** and it must initiate a reassessment of Appellant's request for additional HHS.

Steven Kibit

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

Date Signed: ██████████
Date Mailed: ██████████


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SK/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.