

**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. 2014-35803 HHS

Case No. ██████████

**DECISION AND ORDER**

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

After due notice, a hearing was held on July 22, 2014. Appearing on behalf of the Appellant was ██████████. ██████████, ██████████ and the Appellant offered testimony on behalf of the Appellant. ██████████, Appeals Review Officer, represented the Department of Community Health. ██████████, Adult Services Worker (ASW), and ██████████, Adult Services Manager (ASM) appeared as a witnesses for the Department.

**ISSUE**

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

**FINDINGS OF FACT**

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. On ██████████, the Appellant spoke with the ASW on the phone. The Appellant indicated other people assist him during the day. (Exhibit A, p. 16)
2. On ██████████, the Appellant sent a letter to the ASW. The letter indicated the state (Provider) provided care Monday through Thursday from 11pm to 7am and Sunday at 3pm until Monday at 7 am. The letter identified Community Living Services (CLS) as another service providing care during the day. (Exhibit A, p. 15; Testimony)
3. Prior to ██████████, the Department was not aware that another service was providing for the Appellant's needs during the day time. (Testimony)
4. Prior to ██████████, the Appellant was approved for bathing at 22 minutes a day 7 days a week; grooming 12 minutes a day 7 days a week; dressing 18 minutes a day 7 days a week; toileting 28 minutes a day 7

days a week; transferring 10 minutes a day 7 days a week; eating 56 minutes a day 7 days a week; mobility 14 minutes a day 7 days a week; housework 12 minutes a day 7 days a week; laundry 14 minutes a day 7 days a week; shopping 10 minutes a day 7 days a week; meal preparation 50 minutes a day 7 days a week; catheters 35 minutes a day 7 days a week; skin care 30 minutes a day 7 days a week; range of motion exercises 60 minutes a day 7 days a week. (Exhibit A, p. 21; Testimony)

5. On ██████████, the ASW sent the Appellant an Advance Negative Action letter. The letter indicated the Appellant's HHS were being reduced effective ██████████ due to CLS performing duplicate tasks in the home during the day time. (Exhibit A, p. 5-7; Testimony)
6. Effective ██████████, the Appellant's HHS time and tasks were approved for bathing 11 minutes a day 5 days a week; dressing 18 minutes a day 5 days a week; toileting 14 minutes a day 5 days a week; transferring 5 minutes a day 5 days a week; eating 19 minutes a day 5 days a week; mobility 14 minutes a day 5 days a week; laundry 14 minutes a day 2 days a week; meal preparation 17 minutes a day 5 days a week; catheters 14 minutes a day 5 days a week; skin care 15 minutes a day 5 days a week; range of motion exercises 30 minutes a day 5 days a week. Grooming, shopping and housework were eliminated. (Exhibit A, p. 22; Testimony)
7. On ██████████4, MAHS received from the Appellant a request for hearing. (Exhibit A, p. 4)
8. Ms. ██████████ is the Appellant's Provider. She provides care during the night time hours (11 p.m. to 7 a.m.). (Exhibit A, p. 15; Testimony)

### **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.

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 (ASM) 101, 11-1-11, addresses HHS payments:

#### **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.

*ASM 101,  
12-1-2013, Page 1 of 4.*

ASM 105, 12-1-2013, addresses HHS eligibility requirements:

#### Requirements

Home help eligibility requirements include all of the following:

- Medicaid eligibility.
- Certification of medical need.
- Need for service, based on a complete comprehensive assessment (DHS-324) indicating a functional limitation of level 3 or greater for activities of daily living (ADL).
- Appropriate Level of Care (LOC) status.

\*\*\*

#### Necessity For Service

The adult services specialist is responsible for determining the necessity and level of need for home help services based on:

- Client choice.
- A completed DHS-324, Adult Services Comprehensive Assessment. 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.

- Verification of the client's medical need by a Medicaid enrolled medical professional via the DHS-54A. The client is responsible for obtaining the medical certification of need; see ASM 115, Adult Services Requirements.

*ASM 105,*  
12-1-2013, Pages 1-3 of 3

ASM 120, 12-1-2013, pages 1-5 of 5 addresses the adult services comprehensive assessment and responsible relatives:

### **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 will 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; see RFF 1555. The form is primarily used for APS cases.
- Follow rules of confidentiality when home help cases have companion APS 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 3 level 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.

**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 IADLs if the assessment determined 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 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 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.

#### Responsible Relatives

Activities of daily living may be approved when the responsible relative is **unavailable** or **unable** to provide these services.

**Note: Unavailable** means absence from the home for an extended period due to employment, school or other legitimate reasons. The responsible relative must provide a work or school schedule to verify they are unavailable to provide care. **Unable** means the responsible person has disabilities of their own which prevent them from providing

care. These disabilities must be documented/verified by a medical professional on the DHS-54A, Medical Needs form.

Do **not** approve shopping, laundry, or light housecleaning, when a responsible relative of the client resides in the home, **unless** they are unavailable or unable to provide these services. Document findings in the general narrative in ASCAP.

**Example:** Mrs. Smith is in need of home help services. Her spouse is employed and is out of the home Monday thru Friday from 7a.m. to 7p.m. The specialist would not approve hours for shopping, laundry or house cleaning as Mr. Smith is responsible for these tasks.

**Example:** Mrs. Jones is in need of home help services. Her spouse's employment takes him out of town Monday thru Saturday. The specialist may approve hours for shopping, laundry or house cleaning.

*ASM 120, 12-1-2013,  
Pages 1-5 of 5*

Certain services are not covered by HHS. ASM 101 provides a listing of the services not covered by HHS.

### **Services not Covered by Home Help**

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

- **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).
- **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, 12-1-2013,*  
Pages 3-4 of 4

The ASW testified the prior authorization for services was determined not knowing another service was providing care during the day time hours; and only after recognizing another service was providing care were hours reduced. The ASW indicated the reduction in hours was a result of a determination of need for the night time hours between 11 p.m. and 7 a.m. Monday through Thursday and Sunday (5 nights a week).

The Appellant argued he needed 24/7 hour around the clock care. No one disagreed with the Appellant's assessment. Policy is crystal clear that the Department is not authorized to provided services when they are being provided by another resource (here CLS). In this case, the prior authorization was for both daytime and evening needs. Only after determining CLS provided care during the day time were the hours and tasks reduced. Additionally, the Appellant provided no argument as to why the hours determined by the Department were inadequate.

Providing testimony on behalf of the Appellant was his Provider. I found the Provider to be very evasive in responding to the questions concerning the amount of need. Specifically, the Provider indicated she did not know an average time for either sleeping or eating during the night time. But when pressed for an answer and only after I questioned the level of care, the Provider responded with an answer.

The Provider indicated, the Appellant slept on average 5-6 hours a night during her 8 hour shift. Averaged out over a 5 day calendar week, it leaves approximately 10 to 15 hours a week of hands on care or about 43 to 64.5 hours a month. The Department's

updated time and task determination provided for 58 hours and 13 minutes a month; right in-between the total time available if the Provider was in-deed providing constant hands on care (not watching TV. or conversing). The Provider, like the Appellant did not describe how the allotted time was inappropriate and did not clearly explain how or why more time was needed.

Additionally, confusing things and calling into question the credibility of both the Appellant and the Provider was the discrepancy in the days of service. The Appellant wrote a letter to the Department indicating a service schedule of 11 p.m. to 7 a.m. Monday through Thursday and Sunday from 3 p.m. until Monday at 7 a.m. The Provider on the other hand indicated a schedule of 11 p.m. to 7 a.m. Monday through Saturday.

The policy in this case is pretty clear that the Department cannot provide benefits for a duplication of services and cannot provide benefits for supervision, monitoring, reminding, guiding, teaching or encouraging. This would include watching TV. and conversing.


Based on the evidence presented, Appellant has failed to prove, by a preponderance of the evidence, that he requires more HHS than he was approved for. Accordingly, I find evidence to affirm the Department's actions in this matter.

**DECISION AND ORDER**

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

**IT IS THEREFORE ORDERED THAT:**

The Department's decision is AFFIRMED.

  
\_\_\_\_\_  
Corey A. Arendt  
Administrative Law Judge  
for James K. Haveman, Director  
Michigan Department of Community Health

CAA 

cc: 

**Docket No. 2014-35803 HHS  
Decision and Order**

Date Signed: July 28, 2014

Date Mailed: July 28, 2014

**\*\*\* 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 must 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.