

**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. 2014-35838 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 ██████████. Appellant appeared and 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 morbid obesity; low back pain; arthritis; anxiety; diabetes; pulmonary heart disease; and tachycardia. (Respondent's Exhibit A, page 7).
2. On ██████████, Appellant was referred for HHS. (Respondent's Exhibit A, page 5).
3. On ██████████, ASW ██████████ completed an assessment in Appellant's home with Appellant and her care provider. (Respondent's Exhibit A, page 14).
4. During that assessment, Appellant reported that she lived with her daughters, one of whom is an adult. (Respondent's Exhibit A, page 14; Testimony of ASW ██████████).

██████████
Docket No. 2014-35838 HHS
Decision and Order

5. Appellant also reported needing assistance with the tasks of bathing, grooming, dressing, transferring, meal preparation, housework, laundry, and shopping. (Respondent's Exhibit A, page 14; Testimony of ASW ██████████)
6. On ██████████, the Department sent Appellant a written Services and Payment Approval Notice. (Respondent's Exhibit A, pages 12-13).
7. The notice stated that Appellant had been approved for HHS in the amount of ██████ hours and █████ minutes per month, with a total monthly care cost of █████, effective █████. (Respondent's Exhibit A, pages 12-13).
8. Specifically, Appellant was approved for assistance with the tasks of bathing, grooming, dressing, transferring and meal preparation █████ days a week and the tasks of housework, laundry, and shopping █████ day a week. (Respondent's Exhibit A, page 15).
9. The notice of approval also stated that Appellant's assistance with some tasks had been prorated by one-half due to the fact that Appellant lived with another adult. (Respondent's Exhibit A, pages 12-13).
10. On ██████████, the Michigan Administrative Hearing System (MAHS) received the request for hearing filed by Appellant in this matter. (Respondent's Exhibit A, page 4).
11. Following the receipt of the request for hearing, Appellant and ASW ██████ spoke on the telephone. (Testimony of ██████).
12. Subsequently, the Department's witnesses proposed that Appellant's HHS be increased to █████ hours per month, with a total monthly care cost of █████. (Testimony of █████; Testimony of █████).
13. That proposal was part of a settlement offer, which Appellant rejected, and no increase had been implemented at the time of the hearing in this matter. (Testimony of █████).
14. However, █████ indicated during the hearing that the increase would subsequently be made, with an effective start date of █████. (Testimony of █████).

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

Docket No. 2014-35838 HHS
Decision and Order

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 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.

**Docket No. 2014-35838 HHS
Decision and Order**

- 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

Docket No. 2014-35838 HHS
Decision and Order

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.
- 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).

Docket No. 2014-35838 HHS
Decision and Order

- 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.

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.

Docket No. 2014-35838 HHS
Decision and Order

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 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

██████████
Docket No. 2014-35838 HHS
Decision and Order

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, Appellant's need for HHS is not disputed and she has continually been authorized such services. However, the amount of HHS to be authorized is disputed, with the Department authorizing █ hours and █ minutes of HHS per month and Appellant requesting assistance with more tasks and more time for assistance with the previously authorized tasks.¹

Appellant testified that, while she is not sure exactly what she reported during the assessment, her needs should be obvious and she generally requires more assistance with the tasks of bathing, grooming, dressing, transferring, meal preparation, housework, laundry, and shopping. Appellant also argues that it is obvious that she needs assistance with toileting and mobility as well. Appellant further testified that she needs more HHS because her █ year-old daughter also has needs that must be attended to and Appellant cannot provide all the care necessary for her.

ASW █, on the other hand, testified that both the days per week for the authorized tasks and the times per day for assistance with those tasks were based on what was reported by Appellant and her care provider during the assessment. ASW █ also noted that the assistance with the tasks of meal preparation, housework, laundry, and shopping was prorated by one-half pursuant to the policy because Appellant lived in a shared household with another adult. She further testified that Appellant did not report a need for toileting assistance during the assessment and Appellant's doctor did not identify a need for such assistance in the medical needs form submitted during the application process.

Appellant bears the burden of proving by a preponderance of the evidence that the Department erred in denying her request for additional HHS. Moreover, the undersigned Administrative Law Judge must review the Department's decision in light of the information available at the time the decision was made.

Given the above record, the undersigned Administrative Law Judge finds that Appellant has failed to meet her burden of proof. Appellant is clearly not entitled to all the HHS

¹ Only the initial authorization was appealed by Appellant and is before the undersigned Administrative Law Judge. To the extent the Department plans to increase Appellant's HHS, based on information it received after the request for hearing was filed in this case, and Appellant still disputes that increased amount of services, that dispute is not at issue here and will not be addressed,

██████████
Docket No. 2014-35838 HHS
Decision and Order

that she seeks as the Department cannot authorize HHS for Appellant as child care for her daughter. Moreover, with respect to Appellant's needs, ASW ██████████ testimony was credible and detailed regarding what was reported during the assessment, while Appellant's testimony only generally referred to a need for more assistance and Appellant conceded that she may not have reported all of her needs. Similarly, ASW ██████████ properly determined that any assistance Appellant would have received with respect to meal preparation, housework, laundry, and shopping had to be prorated and reduced by one-half given the reports that Appellant lived with an adult daughter. As described in the above policy, "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 120, page 6 of 7.

According to Appellant, her adult daughter moved out after Appellant's HHS were approved and, if true, that change would justify an increase in her services. However, as discussed above, this Administrative Law Judge's jurisdiction is limited to reviewing the Department's decision in light of the information available at the time the decision was made. Here, given the undisputed shared living arrangement at that time, as well as what needs were actually identified, the information available at the time of the decision supports the Department's decision. Appellant has therefore failed to meet her burden of proof and the Department's decision must be affirmed.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED THAT:

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

Steven Kibit

Steven J. Kibit
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Community Health

Date Signed: ██████████

Date Mailed: ██████████

SK/db

[REDACTED]
Docket No. 2014-35838 HHS
Decision and Order

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.