

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. 2014-35875 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's legal guardian, appeared and testified on Appellant's behalf. Appellant and ██████████, Appellant's sister/care provider, also testified as witnesses for Appellant. ██████████, 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 bipolar disorder and as mentally challenged. (Respondent's Exhibit A, page 8).

¹ Appellant's guardian mistakenly filed the request for hearing in the name of Appellant's provider/sister, rather than Appellant, and the matter was docketed under that name. However, the error was harmless as Appellant's guardian signed the request for hearing; all parties were aware of the issues in dispute; all parties were prepared to proceed with respect to those issues at the time of the hearing; and the Department did not object to simply correcting the name of the appellant. Accordingly, the hearing proceeded as scheduled and the undersigned Administrative Law Judge subsequently had the docket corrected.

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2. Appellant's representative is her legal guardian and Appellant also lives with her guardian. (Respondent's Exhibit A, pages 5, 9; Testimony of Appellant's representative).
3. 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 B, page 1).
4. Specifically, assistance had been authorized for the tasks of taking medications, in the amount of █ minutes per day, █ days a week (█ per month); housework, in the amount of █ minutes per day, █ days per week (█ per month); laundry, in the amount of █ minutes per day, █ days a week (█ per month); shopping, in the amount of █ minutes per day, █ days per week (█ per month); meal preparation, in the amount of █ minutes per day, █ days per week (█ per month); bathing, in the amount of █ minutes per day, █ days per week (█ per month); grooming, in the amount of █ minutes per day, █ days per week (█ per month); dressing, in the amount of █ minutes per day, █ days per week (█ per month); and mobility, in the amount of █ minutes per day, █ days per week (█ per month). (Respondent's Exhibit B, page 1).
5. On █, ASW █ conducted a routine assessment of Appellant's services in Appellant's home with Appellant and her care provider. (Respondent's Exhibit A, pages 14-15).
6. During that assessment, Appellant's provider reported that Appellant is able to dress herself, but the provider picks out Appellant's clothes and tells her what to wear. (Respondent's Exhibit A, page 15; Testimony of ASW █).
7. Appellant's provider also reported that Appellant bathes herself, while the provider monitors her, but that the provider shampoos Appellant's hair. (Respondent's Exhibit A, page 15; Testimony of ASW █).
8. Following the home visit, ASW █ reviewed Appellant's case and noted that Appellant lived in a shared household with another adult, but that her assistance with Instrumental Activities of Daily Living (IADLs) had not been prorated. (Respondent's Exhibit A, pages 9, 14; Testimony of ASW █).
9. On █, ASW █ sent Appellant written notice that her HHS would be reduced to █, effective █ after assistance with dressing was removed and assistance with IADLs prorated. (Respondent's Exhibit A, pages 10-13).

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10. The specific changes made to HHS for Appellant's IADLs were a reduction in housework, to █ minutes per day, █ days per week (████ per month); a reduction in laundry, to █ minutes per day, █ days per week (████ per month); an increase in shopping, to █ minutes a day, █ days a week (████ per month); and a reduction in meal preparation, to █ minutes per day, █ days per week (████ per month). (Respondent's Exhibit A, page 16; Respondent's Exhibit B, page 1).
11. Also, the HHS authorized for assistance with bathing was reduced to █ day a week, from █ days per week, while assistance with grooming was increased to █ days per week, from █ days per week, with the minutes per day for each task remaining the same. (Respondent's Exhibit A, page 16; Respondent's Exhibit B, page 1).
12. The HHS authorized for assistance with taking medications and mobility remained the same. (Respondent's Exhibit A, page 16; Respondent's Exhibit B, page 1).
13. On ██████████ the Michigan Administrative Hearing System (MAHS) received the request for hearing filed 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") 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.

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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

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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.
- 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.

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- 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.

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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

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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 assistance with some tasks was increased, the Department reduced Appellant's HHS overall from █ hours and █ minutes per month, with a total monthly care cost of █ to █ hours and █ minutes per month, with a total monthly care cost of █.

Appellant bears the burden of proving by a preponderance of the evidence that the Department erred in reducing her services. Moreover, the undersigned Administrative Law Judge's jurisdiction is limited to reviewing the Department's decision in light of the information available at the time of that decision.

Here, for the reasons discussed below, the undersigned Administrative Law Judge finds that Appellant has failed to meet her burden of proof with respect to any of the reduced tasks.

Dressing

Appellant was receiving HHS for assistance with dressing in the amount of █ minutes per day, █ days per week (█ per month) before the Department terminated that authorization.

With respect to dressing, Adult Services Manual 121 (5-1-2013) (hereinafter "ASM 121"), page 3 of 6, states:

Dressing - Putting on and taking off garments; fastening and unfastening garments/undergarments, assisting with special devices such as back or leg braces, elastic stockings/garments and artificial limbs or splints.

- 1 No assistance required.
- 2 Client is able to dress self but requires reminding or direction in clothing selection.
- 3 Minimal hands-on assistance or assistive technology required. Client unable to dress self completely (i.e.

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tying shoes, zipping, buttoning) without the help of another person or assistive device.

- 4 Requires direct hands on assistance with most aspects of dressing. Without assistance would be inappropriately or inadequately dressed.
- 5 Totally dependent on others in all areas of dressing.

According to ASW ██████████, she removed assistance with dressing pursuant to that definition and the policy that services such as supervising, monitoring and guiding are not covered by home help after Appellant's provider reported that Appellant is able to dress herself and the provider only picks out/monitors Appellant's clothing.

In response, Appellant's provider testified at times that she physically assists Appellant in dressing and that she reported such assistance to ASW ██████████. Appellant's representative also testified that, while she was not present during the home visit, Appellant cannot dress herself.

However, Appellant's provider's testimony was inconsistent on this issue as she also testified at times that she only picks out clothes and monitors Appellant for appropriate clothing. ASW ██████████'s testimony, on the other hand, was consistent and credible on this issue, especially in light of the fact that there are no physical limitations regarding dressing identified in the record. Accordingly, given the lack of limitations and ASW ██████████'s credible testimony as to what was reported, the undersigned Administrative Law Judge finds that the Department's decision with respect to dressing must be affirmed.

Bathing

Here, assistance with bathing was reduced from ██████████ minutes per day, ██████████ days per week (██████████ per month) to ██████████ minutes per day, ██████████ day per week (██████████ per month)

With respect to bathing, Adult Services Manual 121, page 2 of 6, provides:

Bathing - helping with cleaning the body or parts of the body using a tub, shower or sponge bath; including getting a basin of water, managing faucets, soaping, rinsing and drying. helping shampoo hair.

- 1 No assistance required.
- 2 Bathes self with direction or intermittent monitoring. May need reminding to maintain personal hygiene.
- 3 Minimal hands-on assistance or assistive technology required to carry out task. Generally bathes self but

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needs some assistance with cleaning hard to reach areas; getting in/out of tub/shower. Client is able to sponge bath but another person must bring water, soap, towel. Client relies on a bath or transfer bench when bathing. The constant presence of another is not required.

- 4 Requires direct hand-on assistance with most aspects of bathing. Would be at risk if left alone.
- 5 Totally dependent on others in all areas of bathing.

ASW ████████ testified that she reduced the days per week for assistance with bathing, while also increasing the days per week for assistance with grooming, because the provider reported that Appellant mostly bathes herself and the provider only shampoos Appellant's hair once a week.

In response, Appellant's representative testified that the provider must guide Appellant into the tub, supervise the bathing, and shampoo Appellant's hair ████████ a week.

However, as discussed above, services such as supervising, monitoring and guiding are not covered by home help. Moreover, while helping shampoo hair is a covered service, the undersigned Administrative Law Judge finds ASW ████████ testimony that the provider only reported shampooing Appellant's hair once a week to be credible. The only testimony contradicting ASW ████████ was from Appellant's representative and she was not present during the home visit and does not know what was reported. Appellant's provider also did not describe any assistance with bathing in her testimony. Therefore, given what was reported during the home visit and the available information, the Department properly reduced Appellant's assistance with bathing.

IADLs

In this case, the specific changes made to HHS with Appellant's IADLs were a reduction in housework, to ████████ minutes per day, ████████ days per week (██████ per month); a reduction in laundry, to ████████ minutes per day, ████████ days per week (██████ per month); an increase in shopping, to ████████ minutes a day, ████████ days a week (██████ per month); and a reduction in meal preparation, to ████████ minutes per day, ████████ days per week (██████ per month).

ASW ████████ testified that she prorated Appellant's assistance with the IADLs of housework, shopping, laundry and meal preparation by one half because Appellant lived in a shared household with another adult.

However, ASW ████████ testimony does not exactly match the actual action taken in this case. For example, while ASW ████████ testified that she prorated all four IADLs by one half, Appellant's assistance with shopping was actually increased and assistance with meal preparation was reduced, but not by one half.

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Nevertheless, to the extent ASW ██████████ testimony is inaccurate, the error is in Appellant's favor as the testimony describes greater reductions than what actually occurred. Moreover, regardless of what ASW ██████████ testified to, the undersigned Administrative Law Judge must review the actions that were taken and, in this case, it is clear that the Department is now authorizing half of the maximum amount allowable for assistance with housework, shopping, laundry and meal preparation pursuant to its proration policy.

As described above, that policy states: "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 121, page 5 of 7. The above policy also identifies maximum allowable hours for those four IADLs, including ██████ hours a month for shopping; ██████ hours a month for light housework; ██████ hours a month for laundry, and ██████ hours a month for meal preparation. See ASM 121, page 5 of 7.

Here, Appellant lives in a shared household with her mother, but her services had not been previously prorated. Accordingly, ASW ██████████ prorated her assistance with the four IADLs and authorized one-half of the maximum amount allowed by policy.

In response, Appellant's representative does not dispute that Appellant lives in a shared household with another adult. However, she does appear to argue that Appellant's IADLs are completed separately. She also noted that Appellant has been receiving services for years and that they have never been prorated before.

The above policy does provide that hours for assistance with IADLs need not be prorated in shared living arrangements "where it can be clearly documented that IADLs for the eligible client are completed separately from others in the home" and examples of such a separation include shopping and meal preparation where the client has special dietary needs and food is purchased from specialty stores or where a client is incontinent and laundry must be completed separately. ASM 121, page 5 of 7. However, there has been no such clear documentation in this case.

To the extent the Department failed to follow its proration policy before, it appears to have erred in favor of Appellant and, regardless, the undersigned Administrative Law Judge's jurisdiction is limited to reviewing the current decision to reduce services based on the available information.

With respect to that decision, given the shared household and the lack of clear documentation that IADLs for Appellant are completed separately from others in the home, the Department was bound to follow the mandated policy and prorate the HHS time and payment for all IADLs, except taking medication, by at least ██████████. Appellant was authorized for half of the maximum amount of HHS allowed by policy for meal preparation, shopping, laundry and light housework, and the Department's decision with respect to those tasks must therefore be sustained.

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DECISION AND ORDER

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

IT IS THEREFORE ORDERED THAT:

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

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]

***** 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.