

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 Nos. 2014-373 HHS
2014-9171 HHS

Case No. ██████████

Appellant.

_____ /

DECISION AND ORDER

These matters are 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 his own behalf. ██████████, Appellant's step-father and ██████████, ██████████; appeared as witnesses for Appellant. ██████████, Appeals Review Officer, represented the Michigan Department of Community Health (Department or MDCH). ██████████, Adult Services Worker (ASW); ██████████, RN, MDCH Expanded Home Help Services; ██████████, MDCH Home Help Program Specialist; and ██████████, ILS Department Analyst, appeared as witnesses for the Department.

ISSUE

Did the Department properly determine that Appellant's Home Help Services (HHS) should be reduced?

Did the Department properly determine that Appellant's HHS providers needed to register individually with the HHS program or join an approved HHS agency?

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, born ██████████, who has been diagnosed as a C4 quadriplegic. (Exhibit A, p 29; Testimony)
2. Appellant has been receiving Expanded HHS in the amount of 313 hours and 1 minute per month, with a total care cost of \$ ██████████ per month. (Exhibit A, p 38; Testimony)

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3. Appellant also receives services through ██████████ County Mental Health. (Testimony)
4. With respect to HHS, Appellant is ranked as a “5” (totally dependent) in all areas where he receives assistance. Specifically, HHS was authorized for assistance with bathing, grooming, dressing, transferring, eating, housework, laundry, shopping, meal preparation, catheters or leg bags, range of motion exercises, bowel program, and specialized skin care. (Exhibit A, p 31; Testimony)
5. Appellant’s HHS have remained the same since early ██████████. (Testimony)
6. On ██████████, the ASW conducted a home visit and reassessment of Appellant’s services. Both Appellant and one of his care providers were present during that visit. (Exhibit A, pp 20-25)
7. Following the reassessment, the ASW sent a recommended approved rate of \$ ██████████ per month for HHS to the Michigan Department of Community Health (MDCH) for approval, as required by policy. Appellant’s HHS was continued at the previously approved rate of \$ ██████████ during MDCH’s review. (Exhibit A, pp 6-8; Testimony)
8. On ██████████, the ASW sent Appellant a Services and Payment Approval Notice informing Appellant that his workers would need to enroll in the program independently and all would be paid \$ ██████████ per hour. (Exhibit A, pp 9-11; Testimony)
9. On ██████████, the ASW sent Appellant a Services and Payment Approval Notice informing Appellant that the ██████████ notice was incorrect as to the hourly rate and that his workers would continue to be paid at the rates they were previously receiving. (Exhibit A, pp 12-14; Testimony)
10. On ██████████, the ASW sent Appellant an Advance Negative Action Notice informing Appellant that MDCH had approved his HHS at a rate of \$ ██████████ per month. The Notice informed Appellant that MDCH based its decision on a conversation it had with Appellant on ██████████ as well as standards for practice. Specifically, MDCH reduced Appellant’s proposed time for daily bathing from 1 hour 15 minutes to 40 minutes; daily dressing from 1 hour 15 minutes to 40 minutes, daily eating from 2 hours 30 minutes to 2 hours, daily catheter cleaning from 1 hour 25 minutes to 30 minutes and daily bowel program from 2 hours to 1 hour. (Exhibit A, pp 15-18, 27; Testimony)
11. Compared to what Appellant had previously been receiving for HHS (313 hours and 1 minute per month for a total monthly care cost of \$ ██████████),

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the MDCH review changed Appellant's bathing from 45 minutes a day to 40 minutes per day, his grooming from 43 minutes per day to 37 minutes per day, his dressing from 52 minutes per day to 40 minutes per day, transferring from 1 hour per day to 36 minutes per day, his eating increased from 1 hour 30 minutes to 2 hours per day, catheter/leg bag care from 2 hours per day to 30 minutes per day, his range of motion exercises increased from 40 minutes per day to 1 hour 30 minutes per day, bowl program from 40 minutes per day 7 days per week to 1 hour per day 4 days per week, and specialized skin care increased from 48 minutes per day to 1 hour 15 minutes per day. Again, the MDCH indicated that it based its decision on a conversation it had with Appellant on ██████████ ██████████ as well as standards for practice. (Exhibit A, pp 38-39; Testimony)

12. On ██████████, Appellant submitted a request for hearing to the Michigan Administrative Hearing System (MAHS) regarding the hourly rate for each of his workers. (Exhibit 2)
13. On ██████████, Appellant submitted a request for hearing to MAHS regarding the reduction in his HHS payment. (Exhibit 1)

CONCLUSIONS OF LAW

Adult Services Manual 101 (11-1-2011) (hereinafter "ASM 101") and Adult Services Manual 120 (5-1-2012) (hereinafter "ASM 120") address the issues of what services are included in Home Help Services and how such services are assessed. In part, ASM 101 provides:

Home Help Payment Services

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

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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 if the assessment determines a need at a level 3 or greater. [ASM 101, pages 1-2 of 4.]

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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 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.

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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.

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. 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. [ASM 120, pages 2-3 of 5.]

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

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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.

*Adult Services Manual (ASM) 120, 5-1-2012,
Pages 1-5 of 5*

The Appellant qualifies for Expanded Home Help Services (EHHS). According to ASM 120, EHHS services exist if all basic home help services eligibility criteria are met and the assessment indicates the client's needs are so extensive that the cost of care cannot be met within the monthly maximum payment level of \$██████████. If the cost of care exceeds \$██████████ per month, the ASW must request approval from the Michigan Department of Community Health (MDCH). ASM 120, p 5.

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The MDCH witness who reviews requests for Expanded Home Help Services (EHHS witness) testified that she received the request from Appellant's ASW for HHS in the amount of \$ [REDACTED] (453 hours and 28 minutes per month) on [REDACTED]. The EHHS witness testified that she then held a conference call with Appellant and his ASW and subsequently came up with the approved amount of \$ [REDACTED]. The EHHS witness indicated that she based her decision on the conference call with Appellant on [REDACTED] as well as standards for practice. Specifically, the EHHS witness indicated that she reduced Appellant's allotted time for daily bathing from 1 hour 15 minutes to 40 minutes; daily dressing from 1 hour 15 minutes to 40 minutes, daily eating from 2 hours 30 minutes to 2 hours, daily catheter cleaning from 1 hour 25 minutes to 30 minutes and daily bowel program from 2 hours to 1 hour.

The EHHS witness also testified that, compared to what Appellant had previously been receiving for HHS (313 hours and 1 minute per month for a total monthly care cost of \$ [REDACTED]), the MDCH review changed Appellant's bathing from 45 minutes a day to 40 minutes per day, his grooming from 43 minutes per day to 37 minutes per day, his dressing from 52 minutes per day to 40 minutes per day, transferring from 1 hour per day to 36 minutes per day, his eating increased from 1 hour 30 minutes to 2 hours per day, catheter/leg bag care from 2 hours per day to 30 minutes per day, his range of motion exercises increased from 40 minutes per day to 1 hour 30 minutes per day, bowl program from 40 minutes per day 7 days per week to 1 hour per day 4 days per week, and specialized skin care increased from 48 minutes per day to 1 hour 15 minutes per day. Again, the EHHS witness indicated that she based her decision on a conversation it had with Appellant on [REDACTED] as well as standards for practice.

The EHHS witness pointed out that while some areas of Appellant's HHS were decreased, other areas were increased and the overall decrease was very small. The EHHS witness indicated that some of the decreased time for bathing, for example, was added to specialized skin care, because the activities in question fit better under that category.

The EHHS witness did indicate upon questioning from Appellant that she could support his request for grooming to remain at 43 minutes per day, as opposed to being reduced to 37 minutes per day. The ASW indicated that he would update Appellant's HHS records retroactively to correspond to this agreement.

Appellant testified that bathing takes at least 1 to 2 hours per day and that the 40 minutes allocated was insufficient. Appellant indicated that bathing also includes time for preparation and cleaning both his front and back. Regarding dressing, Appellant indicated that because he sweats a lot he has to have his shirt changed often during the day and that just putting a jacket on can take 15 minutes. Appellant indicated that dressing takes about 1 hour per day, on average. With regard to transferring, Appellant indicated that the 36 minutes per day proposed was insufficient and that transferring takes at least 1 hour per day. With regard to care of his catheter and leg bag, Appellant indicated that 30 minutes per day was insufficient and 1 hour per day was needed. With

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regard to the bowel program, Appellant indicated that this too includes preparation and cleanup time and that on average the process takes 2 to 3 hours.

Appellant indicated that when he met with the ASW and they came up with the proposed rate of \$ [REDACTED] (453 hours and 28 minutes per month), they spent 3 ½ to 4 hours going through the specifics of each task. When Appellant spoke to the EHHS witness on the phone, he indicated that the conversation lasted less than an hour and they spent some time talking about things unrelated to his direct care.

In response to Appellant's testimony, the EHHS witness indicated that her notes indicate the conference call with Appellant lasted 1 hour and 15 minutes, although she did admit that some of the time was spent discussing matters not directly related to Appellant's care. The EHHS witness also testified that she takes into account when making determinations the fact that Appellant has had the same caregivers for a long time and those caregivers have improved in efficiency over that time. The EHHS witness indicated that HHS hours cannot take into account accidents that may occur and that with regard to many of the tasks, she can only approve Appellant for actual time for hands on assistance. The EHHS witness testified that in her opinion, the time allocated for each task was correct based on her conversation with Appellant, the ASW, and standards of practice in the industry. The EHHS also pointed out, for example, that the time for the bowel program was properly reduced because much of the time involved in Appellant being assisted in producing a bowel movement does not involve actual hands on assistance – it involves waiting – which would not be covered by HHS.

Based on the evidence presented, Appellant has failed to prove, by a preponderance of the evidence, that the reduction in HHS was inappropriate. The EHHS witness reviewed Appellant's ADL's and IADL's with him and his provider and made a determination that Appellant's care needs could be met in 297 hours and 37 minutes per month, for a total care payment of \$ [REDACTED]. Previously, Appellant had been approved for 313 hours and 1 minute per month, for a total care cost of \$ [REDACTED], so the reduction amounts to a reduction of only approximately 16 minutes per month. The EHHS witness based her determination on a conversation with Appellant and his ASW, as well as standards of practice in the industry. While some of Appellant's HHS hours in some areas were reduced, HHS hours in other areas were increased. The EHHS witness also properly adjusted the times allocated to account for actual hands on assistance. As such, MDCH properly calculated Appellant's HHS based on policy and the information provided by Appellant and his provider.

Regarding Appellant's appeal regarding the rate that his HHS providers are paid, and whether they need to enroll individually, this tribunal lacks jurisdiction to hear the appeal.

Rule 400.3401 provides, in pertinent part:

(a) "Adverse action" includes, but is not limited to:

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(iv) The reduction, suspension, or adjustment of provider payments.

Rule 400.3406 provides, in pertinent part:

Rule 6. (1) A provider or applicant is entitled to a hearing pursuant to chapter 4 of Act No. 306 of the Public Acts of 1969, being S24.271 et seq. of the Michigan Compiled Laws, in any case in which there has been a final determination of an adverse action as defined in R 400.3401, except where that action is predicated upon the situation described in subrule (2). Emphasis added.

Here, there has been no reduction, suspension, or adjustment of provider payments. The ASW mistakenly informed Appellant that there was going to be a change in provider payments, however, the ASW sent that notice in error and corrected it the next day by sending Appellant a notice indicating that there would be no change in Appellant's provider payments. With regard to whether Appellant's providers need to enroll individually, that action does seem to be within policy, but again, this tribunal does not have jurisdiction to hear the issue because how Appellant's providers are paid is not an adverse action, as defined above. With that said, it appears from the hearing that the parties are working towards a solution to this problem whereby the local CMH will be the agency provider for Appellant's HHS, and then CMH will contract with ██████████, Appellant's current fiscal intermediary, to pay for Appellant's HHS. As such, Appellant's appeal with regard to his providers is dismissed for lack of jurisdiction.

[REDACTED]
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DECISION AND ORDER

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

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

Per the parties' agreement, Appellant's grooming will remain at 43 minutes per day, as opposed to being reduced to 37 minutes per day.

Appellant's appeal with regard to his providers (Docket No. 2014-373 HHS) is dismissed for lack of jurisdiction.



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

cc:

[REDACTED]

[REDACTED]
Date Signed: January 31, 2014

Date Mailed: January 31, 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 March 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.