

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

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IN THE MATTER OF:

Docket No. 14-007026 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 a request for a hearing filed on the Appellant's behalf.

After due notice, an in-person hearing was held on ██████ ██████ ██████. ██████ an advocate from ██████ represented the Appellant ██████ ██████, Appellant's mother and legal guardian, and ██████, Appellant's home help provider, testified as witnesses for Appellant. Appellant was also present, but she did not participate in the hearing. ██████ Appeals Review Officer, represented the Respondent Department of Community Health (DCH or Department). ██████, case manager, and ██████, program manager, 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 Angelman syndrome, seizure disorder, chronic encephalopathy, severe mental impairment, and a history of aspiration pneumonia. (Exhibit A, pages 8, 10).
2. Appellant has been receiving HHS through the Department since ██████. (Exhibit A, page 9).
3. Between ██████, and ██████, Appellant was approved for ██████ hours and ██████ minutes of HHS per month, with a total monthly care cost of ██████. (Exhibit A, page 16b; Exhibit E, page 1).

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4. Specifically, Appellant was approved for assistance with the tasks of bathing, grooming, dressing, toileting, eating, taking medications, housework, laundry, shopping, meal preparation, mobility, and range of motion exercises. (Exhibit A, page 16b).
5. In ██████████, Adult Services Worker ██████████, Appellant's case manager at the time, sent Appellant a written Advance Negative Action Notice stating that, effective ██████████, Appellant's HHS would be reduced to ██████████ per month. (Testimony of Appellant's guardian).
6. Specifically, Appellant's overall HHS were reduced to ██████ hours and ██████ minutes per month after Appellant's assistance with laundry was increased from ██████ minutes per day, ██████ days per week (██████ per month), to ██████ minutes per day, ██████ days a week (██████1 per month), and her assistance with meal preparation was decreased from ██████ minutes per day, ██████ days per week (██████ per month) to ██████ minutes per day, ██████ days per week (██████ per month). (Exhibit A, page 16a; Exhibit A, page 16b).
7. The reduction in meal preparation was based on a proration of services required by policy because Appellant shared a household with at least one other adult, her mother/guardian. (Testimony of ██████████).
8. Appellant's guardian did not request an administrative hearing after receiving the negative action notice. (Testimony of Appellant's guardian).
9. After ██████████ took a medical leave, Appellant's guardian did speak with ██████████r and ██████████ about Appellant's case, claiming that she had spoken with ██████████ and that ██████████ had agreed not to implement the reduction. (Testimony of Appellant's guardian; Testimony of ██████████).
10. ██████████r and ██████████ did not have any knowledge of such an agreement, so they declined to rescind the reduction in ██████████ and, instead, resent documentation regarding Appellant's ability to appeal the negative action. (Testimony of ██████████r; Testimony of ██████████).
11. Appellant's guardian did not request an administrative hearing after speaking with ██████████ and ██████████ (Testimony of Appellant's guardian).
12. On ██████████ spoke with Appellant's home help provider over the telephone. (Exhibit D, pages 1-2; Testimony of ██████████).
13. After that conversation, ██████████ noted that the home help provider reported that Appellant was capable of dressing herself, but needed assistance with pulling her pants up; Appellant is able to feed herself after the provider cuts food up into small pieces; and that, while the provider does not prepare special foods for Appellant and Appellant will eat meals that are

prepared for the family, the provider does add thickening to liquids and hide healthy foods within unhealthy foods so that Appellant will eat them, instead of the chicken nuggets that Appellant would always eat if she had her way. (Exhibit D, pages 1-2; Testimony of ██████████)

14. On ██████████ sent Appellant an Advance Negative Action Notice stating that, effective ██████████, Appellant's HHS would be reduced to ██████████ per month in order to accurately reflect the services completed. (Testimony of ██████████).
15. Specifically, Appellant's overall HHS were reduced to ██████████ hours and ██████████ minutes per month after Appellant's assistance with dressing was decreased from ██████████ minutes per day, ██████████ days per week (██████████ per month) to ██████████ minutes per day, ██████████ days per week (██████████ per month); Appellant's assistance with eating was reduced from ██████████ minutes per day, ██████████ days per week (██████████ per month) to ██████████ minutes per day, ██████████ days per week (██████████ per month); Appellant's assistance with laundry was increased from ██████████ minutes per day, ██████████ days per week (██████████ per month) to ██████████ minutes per day, ██████████ days per week (██████████ per month); and Appellant's assistance with meal preparation was increased from ██████████ minutes per day, ██████████ days per week (██████████ to ██████████ minutes per day, ██████████ days per week ██████████ per month). (Exhibit A, page 16a; Exhibit B, page 1).
16. On ██████████, the Michigan Administrative Hearing System (MAHS) received a request for hearing submitted on Appellant's behalf with respect to that reduction.
17. The request was docketed by MAHS as ██████████
18. However, on ██████████, MAHS sent Appellant a letter indicating that no hearing could be scheduled because the request for hearing was not signed by Appellant and there was no documentation submitted indicating that Appellant had a legal guardian.
19. The letter also advised Appellant to forward a signed request for hearing or documentation of guardianship within ██████████ days if she still wanted a hearing.
20. On ██████████, MAHS received guardianship papers and a new request for hearing.
21. That new request was docketed as this matter, Docket No. ██████████ ██████████ and an administrative hearing was scheduled for ██████████.

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22. On [REDACTED], Appellant's HHS payments were increased to [REDACTED] per month after the hourly pay rate was changed from [REDACTED] per hour to [REDACTED] per hour. (Exhibit E, page 1; Testimony of [REDACTED]).
23. On [REDACTED] Administrative Law Judge [REDACTED] issued an order dismissing this matter due to the failure of Appellant and her representative to appear for the scheduled hearing.
24. On [REDACTED] Appellant's representative filed a request to vacate the order of dismissal.
25. On [REDACTED] [REDACTED], Supervising Administrative Law Judge [REDACTED] issued an order granting Appellant's request to vacate the order of dismissal.
26. Around that same time, MAHS received a new request for hearing filed on Appellant's behalf with respect to her HHS.
27. The new request was deemed duplicative of the recently-vacated case.
28. On [REDACTED] MAHS issued notice of a telephone hearing scheduled in this matter for [REDACTED].
29. That same day, [REDACTED] conducted a home visit and reassessment with Appellant, Appellant's guardian, and Appellant's home help provider. (Testimony of [REDACTED]).
30. During that reassessment, Appellant's home help provider reported that, for range of motion exercises, she would place a book on a high shelf or on the floor so that Appellant would have to reach for it. (Testimony of [REDACTED]; Testimony of [REDACTED]).
31. Appellant's home help provider also reported that Appellant has seizures occasionally and that, when they occur, Appellant needs to be hand-fed and will eat more Ensure pudding. (Testimony of [REDACTED]; Testimony of [REDACTED]).
32. [REDACTED] subsequently sent Appellant a written Advance Negative Action Notice stating that, effective [REDACTED] Appellant's HHS would be reduced to [REDACTED] per month. (Testimony of [REDACTED]).
33. Specifically, Appellant's overall HHS were reduced to [REDACTED] hours and [REDACTED] minutes per month after Appellant's assistance with eating was increased from [REDACTED] minutes per day, [REDACTED] days per week [REDACTED] per month) to [REDACTED] minutes per day, [REDACTED] days per week [REDACTED] per month); her assistance with meal preparation was increased from [REDACTED] minutes per day, [REDACTED] days a week [REDACTED]

per month) to █████ minutes per day, █████ days per week (█████ per month); and her assistance with range of motion, which was █████ minutes per day, █████ days per week (█████ per month) was terminated. (Exhibit B, page 1; Exhibit C, page 1).

34. On ██████████, the Department filed a request to adjourn the hearing in this matter, on the basis that a necessary witness was unavailable on the scheduled date of hearing.
35. On ██████████, the undersigned Administrative Law Judge issued an order granting the request for adjournment and a notice of a rescheduled telephone hearing set for ██████████.
36. Appellant's representative subsequently requested that the hearing be held in-person and, on ██████████ MAHS issued notice of a rescheduled in-person hearing set for ██████████.
37. On ██████████, the in-person hearing was held as scheduled.

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 in part:

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.
- 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.
- 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.

ASM 101, pages 1-3, 5 of 5

Moreover, ASM 120 states in part:

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.

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 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, Appellant's need for HHS is not disputed and she has continually been authorized such services. However, between [REDACTED] and the present day, Appellant's overall HHS were reduced from [REDACTED] hours and [REDACTED] minutes per month to [REDACTED] hours and [REDACTED] minutes per month. The overall reduction was made through [REDACTED] separate actions and the following tasks were affected: laundry, eating, dressing, meal preparation, and range of motion exercises.

Appellant's guardian and representative challenge that overall reduction on appeal and argue that Appellant's services should be reinstated to their original amount. In doing so, they bear the burden of proving by a preponderance of the evidence that the Department erred in reducing Appellant's HHS.

Each affected task will be examined in turn and, for the reasons discussed below, the undersigned Administrative Law Judge finds that Appellant's guardian and representative have failed to meet their burden of proof and that the Department's actions must therefore be affirmed.

Laundry

Appellant's assistance with laundry was increased on [REDACTED] from [REDACTED] hours and [REDACTED] minute per month to [REDACTED] hours and [REDACTED] minutes per month; and then increased again on [REDACTED] from [REDACTED] hours and [REDACTED] minutes per month to [REDACTED] hours and [REDACTED] minute per month.

Given that HHS for assistance with laundry have only been increased, it does not appear that Appellant is challenging the changes.

Moreover, the Department's actions were proper in light of the information they had at the time those actions were taken. As provided above in ASM 120, there are monthly maximum hour limits on all IADLS, including a maximum of [REDACTED] hours per month for assistance with meal laundry, and assessed hours for IADLs need to be prorated by one-half in shared living arrangements where other adults reside in the home, unless it can be clearly documented that IADLs for the eligible client are completed separately from others in the home. In January, the Department authorized half of the maximum amount allowed under policy for assistance with laundry due to the fact that, while Appellant is total dependent on others for assistance with laundry, the Department also had to prorate Appellant's assistance with laundry by one-half because she lived in a shared household with another adult. Additionally, when [REDACTED] subsequently learned that Appellant's laundry was completed separately due to a urine smell, she removed the proration and the Department authorized the maximum amount of assistance for laundry allowed by policy.

Eating

As discussed above, Appellant's assistance with eating was reduced on [REDACTED] from [REDACTED] minutes per day, [REDACTED] days per week ([REDACTED] per month) to [REDACTED] minutes per day,

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█ days per week (█ per month), and increased on █ from █ minutes per day, █ days per week (█ per month) to █ minutes per day, █ days per week (█ per month).

According to █ testimony and notes, the reduction was based on the home help provider's report that Appellant is able to feed herself after the provider cuts food up into small pieces while the increase was based on the home help provider's subsequent report that that Appellant has seizures occasionally and that, when they occur, Appellant needs to be hand-fed.

In response, Appellant's guardian testified that nothing has changed with respect to Appellant's need for assistance since █ Appellant's home help provider also testified that, so long as she is being monitored, Appellant is generally capable of feeding herself, but that Appellant does need greater hands-on assistance with feeding when she has seizures.

Adult Services Manual 121 (5-1-2013) (hereinafter "ASM 121") defines the task of eating as follows:

Eating - helping with the use of utensils, cup/glass, getting food/drink to mouth, cutting up/manipulating food on plate, swallowing foods and liquids, cleaning face and hands after a meal.

- 1 No assistance required.
- 2 Verbal assistance or prompting required. Client must be prompted or reminded to eat.
- 3 Minimal hands-on assistance or assistive technology needed. Help with cutting up food or pushing food within reach; help with applying assistive devices. The constant presence of another person is not required.
- 4 Moderate hands-on assistance required. Client has some ability to feed self but is unable to hold utensils, cup, glass and requires the constant presence of another person while eating.
- 5 Totally dependent on others in all areas of eating.

ASM 121, page 1 of 6

Given that definition and the record in this case, it is clear that, even if nothing has changed with respect to Appellant's need for assistance with eating, Appellant was receiving too much assistance with eating before and the new times authorized by the Department were proper given the new information it received. Monitoring is not covered assistance within HHS and it is undisputed that Appellant is otherwise capable of feeding herself once her food is cut up. Moreover, when ██████ learned that Appellant occasionally has seizures and needs more assistance when they occur, she promptly increased Appellant's services.

Dressing

In this case, Appellant's assistance with dressing was reduced on ██████ from ██████ minutes per day, ██████ days per week (██████ per month) to ██████ minutes per day, ██████ days per week (██████ per month).

According to ██████ notes and testimony, that reduction was based on a report from Appellant's home help provider that Appellant was capable of dressing herself, but needed assistance with pulling her pants up.

In response, Appellant's home help provider testified that, while she may not have conveyed all of Appellant's needs, she never said that Appellant was capable of dressing herself. The provider also testified that Appellant always needs assistance with dressing and that, at most, Appellant can pull her pants up when the pants are put on her.

ASM 121 defines dressing as follows:

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. 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.

ASM 121, page 3 of 6

Despite ██████ noting that the provider reported that Appellant is capable of dressing herself, the actual reduction in this case does not reflect a finding that Appellant is capable of dressing herself and, instead, only a small reduction in services was made. Moreover, given that even Appellant's provider testified that Appellant is not totally dependent in dressing, Appellant's guardian and representative have failed to meet their burden of proving by a preponderance of the evidence that the Department erred by making that small reduction.

Meal Preparation

As discussed above, Appellant's assistance with meal preparation was reduced on ██████ from ██████ minutes per day, ██████ days per week (██████ per month) to ██████ minutes per day, ██████ days per week (██████ per month) before being increased on ██████ to ██████ minutes per day, ██████ days per week (██████3 per month) and increased again on ██████ to ██████ minutes per day, ██████ days per week (██████ per month).

The initial reduction was based on the Department's proration policy. Specifically, while Appellant is totally dependent on others for meal preparation and would normally be entitled to the maximum amount of HHS for assistance with meal preparation allowed by policy, ██████ hours per month, that assistance had to be prorated by one-half because Appellant lived in a shared household with another adult. ██████ also testified that the subsequent increases were based on the fact that, while Appellant remained in shared household and her HHS still needed to be prorated, new information demonstrated that some of Appellant's meal preparation had to be completely separately from others and that, consequently, increases above the prorated maximum were justified. In particular, ██████ r noted that, in ██████ she learned that, while the provider does not prepare special foods for Appellant and Appellant will eat meals that are prepared for the family, the provider does add thickening to liquids and hide healthy foods within unhealthy foods so that Appellant will eat them, instead of the chicken nuggets that Appellant would always eat if she had her way. ██████ also noted that, in ██████ she learned that, when Appellant had her occasional seizures, Appellant could not eat regular meals and the provider would need to prepare more Ensure puddings for Appellant.

In response, Appellant's guardian testified that nothing has changed with respect to meal preparation over the past ██████ years and that Appellant's meals are always prepared separately. Appellant's home help provider also testified that she tries to give Appellant the same food they eat, but Appellant has a different eating schedule and different food preferences.

ASM 121 defines meal preparation as follows:

Meal Preparation - Planning menus. Washing, peeling, slicing, opening packages/cans, mixing ingredients, lifting pots/pans, reheating food, cooking, safely operating stove, setting the table, serving the meal. Washing/drying dishes and putting them away.

- 1 No assistance required.
- 2 Verbal direction, prompting or reminding is required for menu planning, meal preparation or clean up.
- 3 Minimal hands-on assistance required for some meals. Client is able to reheat food prepared by another and/or prepare simple meals/snacks.
- 4 Requires another person to prepare most meals and do clean-up.
- 5 Totally dependent on another for meal preparation.

ASM 121, page 5 of 6

As a preliminary matter, the undersigned Administrative Law Judge would first note that he does not have jurisdiction over any challenge to the ██████████ reduction as such a challenge would be untimely.

The Social Security Act and the federal regulations which implement the Social Security Act require an opportunity for fair hearing to any recipient who believes the Department may have taken an action erroneously. See 42 CFR 431.200 *et seq.* However, the opportunity for fair hearing is limited by a requirement that the request be made within 90 days of the Department's negative action:

Request for hearing.

* * *

The agency must allow the applicant or recipient a reasonable time, not to exceed 90 days from the date that notice of action is mailed, to request a hearing.

42 CFR 431.221(d)

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Here, it is undisputed that Appellant's guardian never filed a request for hearing within █ days of receiving advance notice of the ██████████ reduction. Instead, Appellant's guardian testified that she spoke with ██████ and that ██████ agreed not to implement the reduction. However, there is no evidence supporting that testimony and, even if it is true, Appellant's guardian had months to appeal once the reduction was implemented and she still failed to do so, even after another appeals form was sent.

With respect to the actions that Appellant did timely appeal, Appellant's guardian and representative failed to meet their burden of proving by a preponderance of the evidence that the increases were insufficient and that Appellant's assistance with meal preparation should have been reinstated to the maximum allowed by policy.

As provided above in ASM 120, there are monthly maximum hour limits on all IADLS, including a maximum of █ hours per month for assistance with meal preparation, and assessed hours for IADLs need to be prorated by ██████ in shared living arrangements where other adults reside in the home, unless it can be clearly documented that IADLs for the eligible client are completed separately from others in the home.

Appellant lives in a shared household with another adult and, consequently, her HHS need to be prorated to the extent it cannot be clearly documented that her meals are not completed separately. Here, ██████ learned that some of Appellant's meals are completed separately, due to the fact that the provider adds thickening to liquids; hides healthy foods within unhealthy foods; and prepares Ensure puddings when Appellant has seizures; and she therefore increased assistance with meal preparation above the prorated maximum. Moreover, while Appellant's guardian testified that Appellant's meals have always been prepared separately, the provider testified that she tries to give Appellant the same food they eat.

Given that conflicting testimony of Appellant's witnesses and the lack of any clear documentation that Appellant's meals are always completed separately, the Department's decision to increase Appellant's assistance with meal preparation above the prorated maximum, but not to the maximum allowed by policy, must be affirmed.

Range of Motion

Here, Appellant's assistance with range of motion exercises were terminated on ██████████. She had previously been receiving █ minutes per day, █ days per week (██████ per month) of such assistance.

According to ██████ notes and testimony, she made that reduction after learning that the assistance was not hands-on and that the provider only placed a book out of Appellant's reach, either on the shelf or on the floor, with Appellant then stretching for it.

In response, Appellant's provider testified that placing a book out of reach was what she was told to do by Appellant's physical therapist and that Appellant is resistant to touching. Appellant's provider also testified that Appellant can be physically abusive when touched.

With respect to complex care tasks such as range of motion, both ASM 101 and ASM 120 state that complex care refers to conditions requiring intervention with special techniques and/or knowledge; are performed on clients whose diagnoses or conditions require more management; and may require special treatment, equipment or specific instructions by a health professional. Here, given the undisputed evidence in the record regarding the limited assistance provided by the provider in this area, Appellant's guardian and representative have failed to demonstrate by a preponderance of the evidence that Appellant requires complex care or that the Department erred in terminating the authorized assistance with range of motion exercises.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED THAT:

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

Steven Kibit

Steven Kibit
Administrative Law Judge
For Nick Lyon, 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.