

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH
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Phone: (517) 335-3997; Fax: (517) 373-4147

IN THE MATTER OF:

Docket No.: 15-001158-HHS
Case No.: [REDACTED]

[REDACTED]
Appellant

Administrative Law Judge: Lynn M. Ferris

DECISION AND ORDER

Following Appellant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, a three way telephone hearing was held on March 11, 2015, from Detroit, Michigan. Participants on behalf of Appellant included the Appellant and [REDACTED], Appellant's provider who appeared as a witness. [REDACTED], Appeal Review Officer, appeared on behalf of the Department of Community Health. Participants on behalf of the Department of Human Services (Department) included [REDACTED], Adult Services Worker, and [REDACTED], Adult Services Supervisor.

ISSUE

Did the Department properly assess the Instrumental Activities of Daily Living (IADLs) when completing a functional assessment?

Did the Department properly reduce the Instrumental Activities of Daily Living (IADLs) based upon the Department shared household Policy regarding another adult living in the home?

FINDINGS OF FACT

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

1. The Appellant is a recipient of SSI and received Home Help Services (HHS). The Claimant has been diagnosed with hypertension and right shoulder pain by her doctor on [REDACTED]. Exhibit A, page 29.
2. The Department reduced the Appellant's Home Help Services grant based in part on an interview and a home health care visit with the Appellant and her provider at a case review and assessment performed November 7, 2014. During the

assessment the Department also confirmed that an adult was living with the Appellant.

3. Based upon an adult living in the Appellant's home the maximum services hours for Instrumental Activities of Daily Living (IADLs) allowed by Department policy were reduced by 50%, resulting in an automatic minimum reduction of the service hours. Some IADL services were reduced more than 50% based upon the Department's final determination of need.
4. The reduction was made by Advanced Negative Action Notice dated December 19, 2014. Exhibit A, page 29.
5. At the hearing it was established that two previous Negative Action Notices regarding failure to submit Provider Logs (December 19, 2014) and failure to submit an updated Medical Needs Form (December 19, 2014) were fully resolved prior to the hearing and no outstanding issue remained to be decided at the hearing regarding these Notices.
6. On December 29, 2014 the Department sent an Advanced Negative Action Notice to Appellant which reduced the Claimant's HHS effective January 14, 2015. After the assessment, the Appellant's HHS services were reduced to \$143.68 from \$409.44. Exhibit A, page 14-15.
7. The new services hours for Instrumental Activities of Daily Living (IADLs) after the completion of the current assessment were approved as follows: housework 1.43 hours/month; laundry 1 hour/month; shopping errands 1.26 hours/month; meal prep 8.57 hours/month. Part of the reductions was due to the 50% reduction of IADLs because the Appellant lived in a shared household with another adult, her daughter who lived in the same house. Exhibit A, page 14 -17.
8. The Activities of Daily Living (ADL) new service hours were 2.3 hours/month for dressing and 2 hours/month for mobility (new ADL).
9. On the same date a second Advance Negative Action notice was issued to add mobility as an ADL eligible for payment. Exhibit A, page 20.
10. The Appellant requested a hearing on January 5, 2015 protesting the reduction of HHS benefits.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), Department of Human Services Reference Tables Manual (RFT), and Department of Human Services Emergency Relief Manual (ERM).

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The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

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.

In this case the Appellant seeks review of the results of a completed face-to-face functional assessment completed by caseworker ██████████ with the Appellant in her home that made reductions in the home help services she was receiving on two bases.

The first was based upon the Department's assessment that the Appellant had less need in certain areas of Activities of Daily Living (ADL) and Instruments of Daily Living (IDALs). The second was that the Instrumental Activities of Daily Living (IADL's) were reduced by 50% due to the Appellant having an adult, her daughter, living in her home. A further reduction of IADLS was due to the Department's determination and assessment of actual need assessment reduction in addition to and separate from the 50% reduction.

One of the changes made by the Department's witness ██████████ was made due to Department error allegedly made by a previous worker (not the current caseworker) when making the assessment involving laundry. At some previous time laundry was approved for 7 hour per month which during the hearing Witness ██████████ testified was an error, as the approved hours exceeded the maximum 6 hours per month allowed by Department policy. In reviewing Department policy it appears that the maximum hours that can be approved for laundry is 7 hours. This 7 hour maximum has been in effect since December 2013. Therefore the current correction of an error, reducing laundry to 6 hours was in error as Department policy allows 7 hours a month maximum for laundry. ASM 120, (December 12, 2013) page 5. Therefore the assessment for laundry must be reviewed and reassessed again by the Department.

The Department also added the ADL of mobility assistance at level 3 due to the Appellant using a walker.

The Department during these visits is to conduct a functional assessment of 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
ASM 120 (12/1/13) page 2-3.

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.
ASM 120, page 5.

There is a 5 point scale to evaluate the Appellant, 1 being the most independent and 5 the most dependent. After the assessment the Department assessed the Appellant for ADLs as a 3 for dressing which assessed Appellant as requiring 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. The Department assessed the Appellant for mobility also as a 3, as requiring Minimal hands-on assistance required for specific maneuvers with a wheel chair, negotiating stairs or moving on certain surfaces. Without the use of a walker or pronged cane, client would need physical assistance ASM 121, (May 2, 2013), pages 3-4.

At the hearing it was established by the Department that the IADLs were reduced in part on the basis of witness ██████████'s need assessment and as a result of Appellant's adult daughter residing with Appellant requiring Appellant's services be reduced by 50%. The Department reduced the allotted time for the IADLs by 50% as required by Department policy.

Policy found in ASM 120 addresses this issue and provides:

Proration of IADL where Adult reside in the home

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 adjoined 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. ASM 120 (12/1/13), page.5-6.

Ultimately the Department sent a Negative Action Notice on December 29, 2014 effective January 14, 2015 for the IADL as follows: assist with dressing 5days weekly, housework 4 days weekly, laundry 1 day weekly, shopping 2 days weekly and meal preparation 5 days weekly. The Department had not included the ADL of mobility 4 days a week, but agreed that it should have been listed and ultimately included it as a reimbursed activity. The Appellant's HHS benefits were reduced from \$409.44 to \$143.68. Exhibit 1, page 15.

During the home visit the Department's caseworker notes indicated that the Appellant can perform her personal hygiene, clothe self, medicate, feed herself, and toilet. The Appellant did not dispute this assessment. The Department also found Appellant can stand and walk throughout her home setting for 10/15 minutes without pain. The Appellant used her cane with walking and reported her medications were decreased. The assessment notes indicate that the Client's provider reported that he helps her with housework, laundry, shopping errands, occasional purchase of meals and food preparation and checks in to see if everything is okay. The provider stated at the assessment that he did everything Appellant asks him to do. Witness ██████████ repeatedly testified that the provider during the home visit advised her that for all IADLs he performed them 2 or 3 days per week. At the time of the November 7, 2014 assessment, it was also noted that the Provider was employed at a school and at a retail job. This employment was reported to the Department as having ended on December 29, 2014 and was reported to the Department when the provider, Appellant and caseworker ██████████ met in the DHS offices.

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At the December 29, 2014 meeting in the DHS offices, the Appellant and provider were given the assessment forms and were asked if anything had changed since the assessment and the Provider answered no. The Appellant's diagnosis in the Department's records was hypertension and right shoulder pain. No medical needs form was presented by either party at the hearing. Exhibit 1 p. 2.

██████████ indicated that she determined the remainder of the reductions for the IADLs based upon interviews with the Client and her Provider during the home assessment and at a face to face meeting at the DHS offices on December 29, 2014. The Provider, ██████████ appeared at the hearing as a witness. At the hearing, provider ██████████ testified that he did not agree as to the number of hours granted for IADL services which he provided. Also based upon the Provider's and Appellant's communication at the DHS office on December 29, 2014, with witness ██████████ regarding the services provided the Department relied on the Provider's statement that nothing had changed.

In reviewing the assessment for ADLs, it is determined that the Department's reduction for dressing to 7 minutes 4 days a week was appropriate as the Appellant only needed help with shoes and socks. For Mobility the Appellant was given the maximum based upon 7 minutes for 4 days equating to 2 hours per month and was not challenged by the Appellant. Thus these evaluations are correct and no evidence rebutting these assessments was presented by Appellant.

All IADLs, shopping, housekeeping, meal preparation and laundry were rated 3 by Nelson who indicated that Nelson assessed the Client as needing some human assistance. Exhibit A, page 30.

The shopping category reduction was based upon witness ██████████'s assessment and what she was told by the Provider. The Department witness ██████████ testified that at the November 7, 2014 assessment, the Provider (witness ██████████) advised her that he did shopping 2 days per week and sometimes 3 days per week. When the provider was questioned in the DHS offices on December 29, 2014, he told ██████████ nothing had changed regarding services he provided. The witness ██████████ testified that he shopped 3 days a week and sometimes bought prepared meals. Purchasing of prepared meals is not considered reimbursable and is not part of meal preparation. ██████████ also testified that the Provider told her he purchased some of the meals rather than preparing meals. Shopping need after the assessment by ██████████ was assessed at two days per week for 10 minutes for a total of 1.26 hours per month. This need assessment was more than a 50% reduction in time. Previously, the Appellant received shopping assistance for 2 days per week for 35 minutes for a total of 5 hours per month the maximum allowed. The most the Appellant could receive due to an Adult in the household was 2.5 hours per month. The actual reduction was more than 50% but was adequately explained by the Department and supported by witness ██████████ notes and testimony. (See also table below)

For meal prep the Department reduced the hours to 8.57 hours per month, and reduced meal prep by more than 50%. No change was made in the number of days (5). There

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was no evidence that the Appellant had special dietary needs requiring separate meal preparation. The actual reduction for shopping/errand need was more than 50% and was adequately explained by the Department and supported by her notes and testimony. (See also table below)

The following is a comparison of service hours per month prior to the assessment, versus current hours per month based on the new assessment of need and the 50% reduction in hours assessed:

<u>Current assessment hours IADL</u>	Prior assessment hour per IADL Task
Housework 1.43 hours	6 hours
Laundry 1 hour	6 hours (7)
Shopping/errands 1.26 hours	5 hours
Meal Prep 8.57	24 hours
Exhibit A, page 31.	Exhibit A, page 33.

The maximum hours per month for these tasks (IADLs) as provided in Department policy are:

- 5 hours/month for shopping.
- 6 hours/month for light housework.
- 7 hours/month for laundry.
- 25 hours/month for meal preparation. ASM 120, page 5

The maximum hours available for IADLs in a **shared household** (50% reduction) are:

- 2.5 hours/month Shopping
- 3 hours/month housework
- 3.5 hours/month Laundry
- 12 hours/month Meal prep.

The most hours that the Appellant could receive for IADLS as she was in a shared household, was 50% of the maximum allowed as shown directly above. The Department assessment by ██████████ included further reductions based upon need assessment.

Based on the fact that an adult was conceded as living in the household, the Department properly reduced the hours assessed for IADLs by 50% as a starting point due to a shared household as required by DHS policy in ASM 120.

Witness ██████████ testified at the hearing that he prepares meals only for Appellant. He also testified that he did not reduce any of the things he did or the hours for services previously approved for the Appellant and disputed the Department's assessment. Witness ██████████ also disputed witness ██████████ testimony. Witness ██████████ testified that he sees the Appellant 7 days a week and does different tasks but does not do all the tasks every day,

and the majority of the work is done 4 or 5 days per week. He further testified that as to laundry he did this task 2 day-3 days week, house work 3 to 4 days a week and meal prep 3 to 5 days a week. Witness ██████████ also testified that “we eat a lot of meals and he cooked for himself and Appellant. On further questioning by the undersigned the witness changed his testimony, testifying that he only cooked for the Appellant. Witness ██████████ also indicated that she reduced the meal prep based upon the fact that the Provider purchased some meals and did not cook all of the time purchasing fast food one or two times per week. No other testimony was offered by Appellant or the Provider on this issue.

Regarding shopping, laundry and housework no contradictory testimony was offered by Appellant or her Provider, other than nothing had changed from before. In addition ██████████ notes at the assessment noted customer has weakness in legs and right shoulder pain. Can heat up food and shop with provider. Can wipe furniture and fold clothes. Exhibit A, page 30. Thus the Department’s assessment stands as regards these three IADLs and their reduction by 50% or more including meal preparation as it does not appear that Appellant had special dietary needs due to health conditions or other dietary restrictions requiring need to have her meals prepared separately.

Given the fact that the Claimant needs assessment by the Department was a level 3 for assistance for the IADLs and the ADLs, the assessment reductions are supported by the evidence and testimony of the parties. Further the Provider’s statements regarding services he provided were estimates only and relied on broad conclusions that he still performed all the tasks at the previous level.

Lastly, at the hearing it was established that two previous Negative Action Notices regarding failure to submit Provider Logs Dated (December 19, 2014) and failure to submit an updated Medical Needs Form (December 29, 2014) were fully resolved prior to the hearing and no outstanding issue remained to be decided at this hearing.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, finds that the Department did act in accordance with Department policy when it reduced the Appellant’s IADLs due to a shared living situation and further reductions based upon a face to face assessment. Further it is determined that the Department in correcting a perceived error in hours for laundry previously assessed at 7 hours exceeded the hours allowed by Department Policy should have not been reduced to 6 hours due to its determination that the maximum hours allowed by Department policy only allowed for 6 hours for laundry. This was an error as policy allows 7 hours for laundry.

The Appellant based upon the evidence presented did not demonstrate by a preponderance of the evidence that the need assessments of IADLs were not correct or not in accordance with Department policy.

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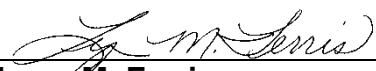
Accordingly, the Department's decision is **AFFIRMED** as regards its reduction in the IADL need requirements and 50% reduction regarding Appellant's shared household due to adult residing with her; and

REVERSED as regards its correction of a prior assessment involving the reduction of hours for laundry from 7 to 6 based on a mistaken belief that Department policy only allowed for a maximum of 6 hours.

The Appellant's Hearing request dated January 5, 2015 regarding outstanding provider logs and submission of a Medical Needs Form were fully resolved prior to the hearing and therefore are DISMISSED.

THE DEPARTMENT IS ORDERED TO BEGIN DOING THE FOLLOWING, IN ACCORDANCE WITH DEPARTMENT POLICY AND CONSISTENT WITH THIS HEARING DECISION, WITHIN 10 DAYS OF THE DATE OF MAILING OF THIS DECISION AND ORDER:

1. The Department shall reassess the reduction of a previous assessment of the IADL for laundry based upon its error that Department policy only allowed for a maximum of 6 hours per month rather than 7 hours per month.
2. The Department shall notify the Appellant of its determination regarding its need assessment for laundry consistent with Department policy.



Lynn M. Ferris
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Community Health

Date Signed: May 19, 2015

Date Mailed: May 19, 2015

LMF/cl

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[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.