

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES**

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IN THE MATTER OF:

Docket No. 15-003580 HHS

██████████,

██████████

Appellant.

_____ /

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 C.F.R. § 431.200 *et seq.*, upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. Appellant appeared on his own behalf. ██████████, Appeals Review Officer, appeared on behalf of the Department of Health and Human Services (DHHS). ██████████, Adult Services Worker (ASW), from the ██████████ County DHHS appeared as a witness for the Department. ██████████, Adult Services Supervisor was also present but did not testify.

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 (DOB ██████████) who has been receiving HHS. (Testimony).
2. Appellant had been diagnosed with osteoarthritis (severe), bilateral carpal tunnel syndrome, Raynaud's syndrome, high cholesterol, hypertension, hypothyroidism, and s/p surgical repair of ruptured left quadriceps tendon. (Exhibit A, pp. 6, 9).
3. On ██████████ ASW ██████████ did a face-to-face home visit with the Appellant and later spoke with his provider and completed a comprehensive reassessment of the Appellant's need for services. The ASW redetermined the tasks to be authorized for Appellant's HHS. The Appellant and his provider advised the ASW that the Appellant does not need any assistance with eating. They also advised that the Appellant

does his own bathing and uses a cane to get in and out of the shower. Appellant advised the ASW he was able to wash his own body. The Appellant also advised that he handles his own mobility with a cane. The ASW viewed him walking in the home without human assistance, and she observed him get up and down from a seated position on his bed. The ASW determined that transferring would be added as the Appellant needed assistance to get on and off the toilet. The ASW also recommended that the Appellant get a toilet seat riser to alleviate his problem getting on and off the toilet. Appellant also advised his provider is in the home █ days per week to assist with dressing and preparing meals. Accordingly, the ASW determined that assistance with transferring should be added, dressing and laundry should be increased, and toileting and bathing should be removed from the assistance to be provided by the Appellant's HHS provider. (Exhibit A, pp. 12-13 and testimony).

4. On ██████████, the Department issued a Services and Payment Approval Notice to Appellant notifying him that he was approved for a total monthly care cost of ██████, with an effective start date of ██████████. The approval notice stated transferring had been added, dressing and laundry had been increased, and toileting and bathing had been removed. The notice indicated that this had resulted in an increase in his total monthly care cost. (Exhibit A, pp. 10-11 and testimony).
5. On ██████████ Department received a DHS 54A Medical Needs form from ██████████ indicating the Appellant needed assistance with eating, toileting, bathing, grooming, dressing, mobility, meal preparation, shopping, laundry, and housework. (Exhibit A, p. 6 and testimony).
6. On ██████████, MAHS received Appellant's Request for Hearing, asking that bathing, eating, and mobility be added to the approved tasks for HHS as indicated by his doctor on the Medical Needs form. (Exhibit A, p. 4-5).

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 Home Help Services and how such services are assessed. ASM 101 states in part:

Payment Services Home Help

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.
- Light housecleaning.

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 or her daughter agrees to assist her at no charge. 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, pp. 1-2 of 5, emphasis added].

ASM 120 states in part:

INTRODUCTION

The DHS-324, Adult Services Comprehensive Assessment is the primary tool for determining need for services. The comprehensive assessment must be completed on **all open independent living services cases**. ASCAP, the automated workload management system, provides the format for the comprehensive assessment and all information must be entered on the computer program.

Requirements

Requirements for the comprehensive assessment include, but are not limited to:

- A comprehensive assessment will be completed on all new cases.
- A face-to-face contact is required with the client in his/her place of residence.
- The assessment may also include an interview with the individual who will be providing home help services.

- A new face-to-face assessment is required if there is a request for an increase in services before payment is authorized.
- A face-to-face assessment is required on all transfer-in cases before a payment is authorized.
- The assessment must be updated as often as necessary, but **minimally** at the six month review and **annual** redetermination.
- A release of information must be obtained when requesting documentation from confidential sources and/or sharing information from the department record.
 - Use the DHS-27, Authorization To Release Information, when requesting client information from another agency.
 - Use the DHS-1555, Authorization to Release Protected Health Information, if requesting additional medical documentation. This form is primarily used for APS cases.
- Follow rules of confidentiality when home help cases have companion adult protective services cases; see SRM 131, Confidentiality.

* * *

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.

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 level 3 ranking 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.

* * *

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.

* * *

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, 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 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 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, pp. 1-5 of 7, emphasis added].

The testimony and evidence presented at the hearing demonstrated that the ASW properly redetermined the Appellant's needs for home help services based on the information she was provided by the Appellant and the Appellant's provider during the comprehensive reassessment, along with her own personal observations of the Appellant. On ██████████, ██████████ did a face-to-face home visit with the Appellant and she later spoke with his provider and completed a comprehensive reassessment of the Appellant's need for services. The ASW redetermined the tasks to be authorized for Appellant's HHS. ██████████ stated the Appellant and his provider advised the ASW that he does not require any assistance with eating. The Appellant and his provider also advised the ASW that he does his own bathing and uses a cane to get in and out of the shower. Appellant advised the ASW he was able to wash his own body. Appellant also advised that he handles his own mobility with a cane. The ASW viewed the Appellant walking in the home without human assistance, and she observed him get up and down from a seated position on his bed.

The ASW determined that transferring would be added as the Appellant needed assistance to get on and off the toilet. The ASW also recommended that the Appellant get a toilet seat riser to alleviate his problem with getting on and off the toilet. Appellant also advised the ASW that his provider is in the home ██████████ days per week to assist with dressing and preparing meals. Accordingly, the ASW determined that assistance with transferring should be added, dressing and laundry should be increased, and toileting and bathing should be removed from the assistance to be provided by the Appellant's HHS provider. (Exhibit A, pp. 12-13 and testimony).

On ██████████, the ASW issued a Services and Payment Approval Notice to Appellant notifying him that he was approved for a total monthly care cost of ██████████, with an effective start date of ██████████. The approval notice stated transferring had been added, dressing and laundry had been increased, and toileting and bathing had been removed. The notice indicated that this had resulted in an increase in his total monthly care cost. (Exhibit A, pp. 10-11 and testimony).

The Appellant testified that he wanted to know what State law allowed the ASW to deny him services that his doctor circled on the Medical Needs Form. The Appellant did not; however, specifically dispute the testimony of the ASW given concerning the information she received from the Appellant and his provider during the redetermination assessment.

Adult Services Manual 100 (ASM 100) sets forth the legal authority for Department of Health and Human Services oversight of the Independent Living Services, a/k/a/ the Home Help Services program. The Department is given authority to administer the program including the promulgation of the policy found in the Adult Services Manual. ASM 100 states in part:

LEGAL AUTHORITY

Title XIX of the Social Security Act, 42 USC 1346 et seq.

42 CFR 440.170(f)

Social Welfare Act, 1939 PA 280, as amended, MCL 400.14(1)(p)

Medicaid State Plan is the state's contract with the federal government to provide a Medicaid program. Independent living services (home help) is the Medicaid State Plan for personal care services in the home. The Michigan Department of Community Health (now the Michigan Department of Health and Human Services) is the single state agency for Medicaid. {ASM 100, p. 1 of 2}.

The Department presented credible evidence to show that at the time the Appellant's redetermination, the information provided by the Appellant and his provider, along with the observations made by the ASW, supported the changes that were made to his HHS services, including adding transferring to assist with toileting, increasing dressing and laundry, and removing toileting and bathing. The policy quoted above dictates that the needed services are determined by the comprehensive assessment conducted by the adult services specialist. The preponderance of the evidence shows that the ASW properly determined the needed services based upon the information she received at the time of the reassessment, including her own observations of the Appellant's mobility and ability to do transfers without assistance, and the reports that the Appellant was able to eat on his own and do his bathing on his own. Accordingly, the Department's decision must be sustained.

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 based on the ██████████ reassessment.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.


William D Bond

William D. Bond
Administrative Law Judge
for Nick Lyon, Director

Michigan Department of Health and Human Services

Date Signed: ██████████

Date Mailed: ██████████


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cc:



***** 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.