

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

P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 373-4147

IN THE MATTER OF:

████████████████████,

Appellant

Docket No. 15-010207 HHS
Case No. ██████████

DECISION AND ORDER

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

After due notice, an in-person hearing was held on ██████████. Appellant was represented at the hearing by Attorney ██████████ (P██████████). Appellant appeared and testified on his own behalf. Appellant's Provider, ██████████, RN, and ██████████, Appellant's friend, appeared and testified. ██████████, Appeals Review Officer, represented the Department of Health and Human Services (Department). ██████████, RN, Reviewer of Extended Home Health Services; ██████████, Adult Services Worker (ASW); ██████████, Program Manager; and ██████████, Eligibility Specialist and Hearings Facilitator appeared and testified as witnesses for the Department.

Respondent's Exhibit A pages 1-50 were admitted as evidence without objection. Administrative Law Judge (ALJ) Exhibits 1-18 (Appellant's Medical Needs forms from 2002 through 2010) are admitted as evidence. Appellant Exhibit 1 and Exhibit 2 pages 1-30 (Appellant's caregiver's one week running total of daily care given) are admitted as evidence.

ISSUE

Did the Department properly reduce Appellant's request for additional 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, date of birth ██████████ ██████ who has been diagnosed with congenital agenesis of the legs and

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arms, paralytic syndrome – no legs bilaterally, scoliosis, migraines, cervical disc disease, chronic constipation, diverticulosis, absence of right upper extremity, near complete absence of left upper extremity with a rudimentary partial hand that originates directly off of the collarbone and shoulder blade. The patient's bilateral lower extremities are approximately 8 inches long and display severe underdevelopment (hypoplasia) of length of femur, tibia, fibula and bones of feet. (Appellant Exhibit 1)

2. Appellant is classified as a Disabled Adult Child (DAC).
3. Appellant is not required to provide updated medical information every six months.
4. Appellant has been receiving Expanded home Health Services since at least [REDACTED]. (ALJ Exhibit page 2)
5. In [REDACTED], Appellant has been determined to be completely dependent in the areas of toileting, bathing, grooming, dressing, medications, laundry and housework. He is mostly dependent in the areas of eating/feeding, transferring, mobility, meal preparation and shopping/errands. (ALJ Exhibit page 2)
6. In [REDACTED], Appellant required four enemas per day each taking one hour. He suffers hemorrhoids due to enemas. It was necessary that he take two one hour baths a day and ice message treatment after the bath, which took additional ten minutes. (ALJ Exhibit page 2)
7. In [REDACTED], the constant presence of the provider was necessary to assure Appellant's safety. (ALJ Exhibit page 2)
8. In [REDACTED] Appellant was approved for 256 hours per month of Home Help Services.
9. On [REDACTED] The Adult Services Worker recommended that Appellant receive 234:15 monthly hours of HHS.
10. In [REDACTED], Appellant was approved for 234:15 hours of Home Help Services.
11. In [REDACTED], a six month assessment was conducted the Adult Services Worker recommended that Appellant's service remain the same.
12. The Adult Service Worker submitted a request for continuation of Extended Home Help Services.
13. Appellant was approved for 173:44 hours per month of Home Help Services.

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14. On [REDACTED], the Adult Services Worker sent Appellant an Advanced Negative Action notice informing him that HHS services would be reduced from 234:15 to 173:44.
15. The Expanded Help Services Reviewer determined that the following should be reduced: toileting, bathing, mobility, medications. Meal preparation and grooming were increased.
16. On [REDACTED], the Michigan Administrative Hearing System (MAHS) received Appellant's Request for Hearing to contest the negative action and request an increase in Expanded Home Help Services.

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 Manuals 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. Pertinent department policy states:

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

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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.

Adult Services Manual (ASM) 120

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 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.

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- 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. ASM 120, pages 1-2

The **Bridges Eligibility** module in **ASCAP** contains information pertaining to the client's type of assistance (TOA) eligibility, scope of coverage and level of care.

The **Medical** module in **ASCAP** contains information regarding the physician(s), diagnosis, other health issues, adaptive equipment, medical treatments and medications. The medical needs certification date is entered on the diagnosis tab, at initial certification and annually thereafter, if applicable; see ASM 115, Adult Services Requirements.

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.

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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.

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.

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.

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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 client's 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 and feeding.
- Catheters or legs bags.
- Colostomy care.
- Bowel program.
- Suctioning.
- Specialized skin care.
- Range of motion exercises.
- Peritoneal dialysis.
- 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.

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.**

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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

Expanded home help services (EHHS) exists 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 \$549.99.

When the client's cost of care exceeds \$1299.99 for **any** reason, the adult services specialist must submit a written request for approval to the Michigan Department of Community Health (MDCH). (Now Michigan Department of Health and Human Services)

Follow the **Procedures for Submitting Expanded Home Help Requests** found on the Adult Services Home Page. Submit the request with all required documentation to:

Michigan Department of Community Health
Long Term Care Services Policy Section
Capital Commons Building, 6th Floor
P.O. Box 30479
Lansing, MI 48909

MDCH will provide written documentation (DCH-1785) of approval. A new request **must** be submitted to the Michigan Department of Community Health whenever there is an increase in the cost of care amount. A new request is **not** required if the cost of care decreases below the approved amount set by MDCH.

Note: If an expanded home help case closes and reopens within 90 days and the care cost remains the same, a new MDCH approval is **not** required. ASM, 120.

In the instant case the Appellant qualifies for Expanded Home Help Services (EHHS). According to ASM 120, page 5 eligibility for EHHS services exist if all Basic Home Help Services eligibility criteria are met and the assessment indicates the client's needs are

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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). Home Help Services does not pay for skilled nursing care.

Appellant testified that his condition has not improved. His condition has worsened. He does not understand why the HHS has been steadily reduced when his need for care has not. He used to have the Medicaid Waiver Program but was changed to HHS. He needs more care than he is being allotted.

Appellant does have a motorized wheelchair which he does not use inside the home. He has no hands or arms. He cannot operate the wheel chair independently. He cannot operate the manual wheelchair independently in the home. Appellant eats three meals per day and must be fed most of the time. He must have his clothing changed several times per day if he has a urine or bowel accident.

The ██████████ assessment indicates that the provider is in the home seven hours per day/seven days per week. Appellant receives 4-5 enemas per day, supervised, which involve holding him up. It is done in the bathroom 1 hour per enema. Bathing is 1-2 times per day, mostly in the am and reportedly 30-45 minutes. Grooming involves providing Appellant with a shave, cutting hair one time per month and trimming every other week; nails every couple of days. He needs teeth brushed. Dressing is usually 4 times per day because of leakage and sweating. Transferring is 5-10 minutes per transfer. He takes three meds and one vitamin daily, one med every three days, one med PRN and 1-2 times per month. He received 5 hours for shopping, 6 hours for housework, 42 minutes for eating and 16 hours for mobility in the home. State's Exhibit A page 25.

The Department's witness, RN Murphy, determined that the time spent in the bathtub is excessive and appears to include time for soaking which is not payable. Appellant has a motorized wheelchair to enable transfer on/off independently. The use of enemas is contraindicated and the medication list is incomplete. She also testified that she did not have updated medical information in which to make her assessment.

An ██████████, Complex Care request letter indicates that Appellant has been known to Adult Services program through ██████████ County since ██████████. His case closed in ██████████ while he received services through ██████████ Waiver Program. Appellant returned to the Department in ██████████. He continues to reside in his childhood home and lives alone. His home has multiple modifications to accommodate his needs and some of those were paid for through DHS's previous funding of PDS. Appellant is a DAC and per policy is not required to obtain DHS-54A annually. The letter recommended that Appellant's care remain at 234:15 hours monthly effective ██████████.

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Appellant is assessed and scored at

'3' for toileting,

Appellant testified that he had his toilet modified so that it is one inch off the floor. He can pull himself forward on the floor with his mouth and struggle to mount the toilet but he cannot clean himself up afterwards. He cannot dress or undress himself and often has to call a friend to come and help him clean himself if he manages to make it to the toilet. Often his HHS caregiver will stay longer even though she is not being paid to help him so that he is not alone. He cannot undo or replace clothing for toileting purposes. Appellant has a deformed, underdeveloped left upper extremity being too short to perform the action of self-treatment he must have seven hours of skilled nursing care per day for administration of the four enemas. The four enemas are medically necessary to prevent severe constipation, and reduce the severity of diverticulitis episodes. Appellant should be scored a '5' for toileting as he cannot carry out any aspect of toileting without human assistance and cannot clean himself after he uses the bathroom.

'4' for transferring;

Appellant is totally dependent on others for all transfers. He must be lifted or mechanically transferred. Though he stated that he can slide on the floor using his mouth in an emergent situation, this is neither safe nor sanitary. He cannot move from one sitting or lying position to another. He requires to be moved from bed or wheelchair to a sofa or chair. He cannot come to a standing position on his own. He requires repositioning to prevent skin breakdown per his DHS 54A Medical Needs forms. This should be scored '5'.

'4' eating;

Appellant testified that he can occasionally feed himself by putting his face in the plate if the food is set in front of him and cut up for him. Testimony indicates that he gets very little food this way and makes a huge mess. However, he cannot clean himself up afterwards. Appellant requires more than moderate hands-on assistance. This should be scored '5'.

'4' mobility;

Appellant is totally dependent on others for all mobility. He must be carried, lifted or pushed in a wheel chair or gurney. Testimony indicates that Appellant is usually in bed if his caregiver is not present because it is so difficult for him to move around. Appellant requires more than moderate hands on assistance.

'3' medication,

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Appellant is totally dependent on another. He does not (cannot) take medication unless someone assists in administering. He should be scored a '5' in this category.

'4' shopping,

Appellant is taken to the store two times per week. He is unable to reach, carry or lift. He is totally dependent on another for shopping but can accompany if brought by his caregiver and can select needed items. Though he is sentient, he is unable to pick up or carry any items. This should be scored '5'

'4' meal preparation.

He is totally dependent on others. He cannot wash, peel, slice, open packages, mix ingredients, lift pots/pans, reheat food, cook, safely operate stove, set table, serve meal, wash/dry dishes or put them away. This should be scored '5'

In the instant case, Appellant's medical documentation notes that Appellant requires seven hours daily of *skilled* nursing care per day. Appellant requires four enemas per day. He is diagnosed with congenital agenesis of the legs and arms, paralytic syndrome – no legs bilaterally, scoliosis, migraines, cervical disc disease, chronic constipation, diverticulosis, absence of right upper extremity, near complete absence of left upper extremity with a rudimentary partial hand that originates directly off of the collarbone and shoulder blade. The patient's bilateral lower extremities are approximately 8 inches long and display severe underdevelopment (hypoplasia) of length of femur, tibia, fibula and bones of feet. Appellant is 29 inches tall and weighs about fifty pounds.

██████████ medical documentation from Appellant's treating physician indicates that Appellant must have four enemas per day, seven days per week, which takes four hours per day. He needs to be transferred at least 20 times per day. He needs 24 hours/seven days a week care from his caregiver.

A ██████████ FIA-54 Medical Needs form indicates that Appellant has a lifetime certified medical need for assistance with eating, toileting, bathing, grooming, dressing, transferring, mobility, medications, meal preparation, shopping/errands, laundry and housework, as well as complex care with bowel program and bedsore prevention. Appellant has special need for a van, wheelchair and caregiver to transport him and help with his wheelchair.

A ██████████, FIA 54A Medical Needs form indicates that Appellant needs assistance with all ADLs and IADLs, as well as complex care for enemas. Appellant has special need for a van, wheelchair and caregiver to transport him and help with his wheelchair.

A ██████████, DHS 54A form indicates that Appellant needs assistance with all ADLs and IADLs, as well as complex care for enemas. Appellant has special need for a van, wheelchair and caregiver to transport him and help with his wheelchair.

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An [REDACTED], DHS 54A form indicates that Appellant needs assistance with all ADLs and IADLs, as well as complex care for enemas. Appellant has special need for a van, wheelchair and caregiver to transport him and help with his wheelchair.

An [REDACTED] 007, DHS 54A form indicates that Appellant needs assistance with all ADLs and IADLs, as well as complex care for enemas. Appellant has special need for a van, wheelchair and caregiver to transport him and help with his wheelchair.

An [REDACTED], DHS 54A form indicates that Appellant needs assistance with all ADLs and IADLs, as well as complex care for enemas. Appellant has special need for a van, wheelchair and caregiver to transport him and help with his wheelchair.

An [REDACTED], DHS 54A form indicates that Appellant needs assistance with all ADLs and IADLs, as well as complex care for enemas. Appellant has special need for a van, wheelchair and caregiver to transport him and help with his wheelchair.

A [REDACTED], letter from Appellant's treating physician indicates "Due to the challenges of quadriplegic the patient his is requiring 7 hours of skilled nursing care. Patients care involves Enemas given Qid."

A [REDACTED], DHS 54A form indicates that Appellant needs assistance with all ADLs and IADLs, as well as complex care for enemas. Appellant has special need for a van, wheelchair and caregiver to transport him and help with his wheelchair.

A [REDACTED], DHS 54A form indicates that Appellant needs assistance with all ADLs and IADLs, as well as complex care for enemas. Appellant has special need for a van, wheelchair and caregiver to transport him and help with his wheelchair.

[REDACTED] medical reports indicate that because Appellant has a deformed, underdeveloped left upper extremity being too short to perform the action of self-treatment he must have seven hours of skilled nursing care per day for administration of the four enemas. The four enemas are medically necessary to prevent severe constipation, and reduce the severity of diverticulitis episodes. Appellant Exhibit 1

Appellant has minimal use of his very small legs and does not have arms or hands. He cannot ambulate or even stand beyond a few seconds. Appellant testified that he is given about seven hours of care per day and the rest of the day he is by himself and mostly is in bed because he is unable to do things for himself.

Appellant stated that not only have his needs not been properly assessed, his needs have increased as he has aged and those increases have not been taken into consideration.

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Appellant's caregiver, who has recently become a Registered Nurse, provided a running total of care minutes for one solid week of the services that she provides for Appellant when she is at his home. (Appellant Exhibit 2 pages 1-30)

Appellant has established through medical diagnosis and credible testimony that he is a quadriplegic and has congenital agenesis of the legs and arms, paralytic syndrome – no legs bilaterally. The Long Term Care Policy Unit did not give a sufficient reason or provide sufficient documentation to support the reduction in HHS service time.

Based on the evidence presented, Appellant has established, by a preponderance of the evidence, that he requires more HHS than he was approved for. The Department has not established by a preponderance of the evidence that it was acting on compliance with Department policy when it reduced Appellant's services. In [REDACTED], Appellant's treating physician indicated that Appellant needs 24 hour, seven days a week care from his caregiver. It makes no logical sense to this Administrative Law Judge that Appellant would need at least 256 hours of care in [REDACTED] and then need only 174 hours of care in [REDACTED] when his condition has not changed. In fact, his condition has worsened. In [REDACTED], Appellant was somewhat ambulatory. He is now [REDACTED] years old. In [REDACTED], he is not ambulatory and has no use of his 'legs and feet'. He still lacks arms and hands. It does not make sense that Appellant needs assistance with toileting only sometimes, when he can never clean himself after he uses the toilet. It also sounds unsanitary and unsafe for Appellant to scoot across the floor with his mouth to try to use the toilet when he is alone. He testified credibly that he has to call a friend to come clean him when he is home alone. Appellant's witness also testified that he picks Appellant up and takes him to the bathroom when he is at church and he must take his pants down and hold his penis for Appellant to use the bathroom or there is a mess. This statement supports the contention that Appellant is totally dependent in toileting.

Appellant cannot operate either a manual or electric wheelchair by himself because he has no upper limbs (only a small flipper like appendage on the left side) and non-working tiny lower limbs.

This Administrative Law Judge (ALJ) is in agreement with the caseworker who actually conducted the in-home assessment that Appellant is completely dependent in the areas of toileting, bathing, grooming, dressing, medications, laundry, meal preparation and housework.

This ALJ finds that Appellant does suffer from hemorrhoids and diverticulitis and requires four enemas per day, per extensive medical documentation. The Appellant's doctor has ordered that Appellant be giving four enemas per day for bowel disorders. He is not continent as he does have bathroom accidents. Since Appellant is a DAC he is not required to submit new medical information every six months. This Administrative Law Judge does not understand how the Department determined that four enemas are contraindicated, when they are a part of Appellant's medical treatment plan. Soaking in

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the bath tub is also a part of Appellant medical treatment plan because he suffers from hemorrhoids and scoliosis.

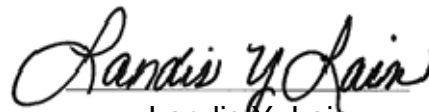
This ALJ finds that Appellant has established that he is completely dependent in the area of feeding and eating as he cannot eat food that has not been first cut up for him and he has to lean over and put his face in the plate at best. He is unable to transfer himself and must be lifted from his chair. Appellant cannot drive. He cannot go shopping or run errands without extensive hands-on assistance.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department did not properly reduce Appellant's request for additional HHS.

IT IS THEREFORE ORDERED THAT:

The Department's decision is **REVERSED**. The Department is **ORDERED** to allow Appellant to submit additional evidence of his need for additional care and to reassess him increased for Extended Home Help Services.



Landis Y. Lain
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Health and Human
Services

LYL [redacted]

cc: [redacted]

Date Signed: [redacted]

Date Mailed: [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.