



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
Christopher Seppanen  
Executive Director

SHELLY EDGERTON  
DIRECTOR

[REDACTED]

Date Mailed: [REDACTED]  
MAHS Docket No.: 15-020017  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Janice Spodarek**

**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 Petitioner's request for a hearing.

**PROCEDURAL HISTORY**

On [REDACTED] Petitioner filed a request for an administrative hearing. On [REDACTED] Michigan Administrative Hearing System (MAHS) scheduled an administrative hearing for [REDACTED]. On [REDACTED] Petitioner requested an adjournment. MAHS approved the adjournment and on [REDACTED] a notice was issued rescheduling the hearing TO [REDACTED]. At the time and place for the hearing, the Department of Health and Human Services (Department or Respondent) was not prepared to proceed on the grounds that the Authorized Hearing Representative stated that the Respondent had not received notice of the rescheduled telephone hearing. MAHS once again rescheduled the hearing for [REDACTED] which hearings are routinely scheduled 4-6 weeks in advance.

Petitioner filed a motion to have the Department's negative action reinstated due to timely hearing request. Petitioner's hearing request was filed outside the 11 day period of time for which to have the action reinstated. The undersigned ALJ denied the request as it did not fall within the period of time that would entitled Petitioner to reinstatement.

After due notice, the present administrative hearing was held on [REDACTED]. Petitioner requested to appear by conference telephone and Petitioner's request was granted.

Theresa Root, Appeals Review Officer (ARO), represented the Department of Health and Human Services (Department or Respondent). Leslie Slapnik, Adult Services Worker (ASW), appeared as a witness for the Department.

**ISSUE**

Did the Department do a proper assessment at Petitioner's review for his HHS grant?

**FINDINGS OF FACT**

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

1. Petitioner is [REDACTED] year-old male beneficiary of the Medicaid welfare programs.
2. At all relevant times, Petitioner has been a beneficiary of the HHS program. (Exhibit A).
3. Petitioner's diagnoses include glucocorticoid deficiency, chronic pancreatitis, lumbosacral disc degeneration, ascorbic acid deficiency, anxiety, and depression. (Exhibit A.24).
4. Petitioner previously had an open HHS in another county with a grant of \$880.17 and which grant included some hours for transferring and mobility. (Exhibit A.28).
5. Pursuant to a review, on [REDACTED] the ASW completed an in-home assessment documenting that Petitioner resides with his caregiver, client stated that he needs assistance with dressing, medication, grooming, housework and laundry, food/meds, and meal preparation. The ASW indicated that the client failed to provide justification as to why he needs help with these tasks every day. Client complained of trouble with his hands but was observed twisting open a small bottle of pop. ASW explained proration policy which had not previously been applied would be applied to Petitioner's grant. Client observed coming out of bedroom using cane to walk. Sat on couch and did not request any help to position himself on couch. Client stated that he can walk to the grocery store. (Exhibit A.20-21; Testimony).
6. Following the home visit, the Department issued notice to reduce Petitioner's grant from \$880.17 to \$539.33 subsequently changed to a reduction of \$747.16 made retroactive. (Exhibit A; Testimony). The Department removed mobility, transferring, and increased housework. Petitioner's approved hours were reduced due to the required application of the proration policy. (Exhibit A).
7. On [REDACTED], Petitioner's Request for Hearing was received by the Michigan Administrative Hearing System. Petitioner submitted medical statements with his hearing request from [REDACTED]. (Exhibit A).

## **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 (ASM) 101, 11-1-11, addresses HHS payments:

### **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.

*Adult Services Manual (ASM) 101,  
11-1-2011, Page 1of 4.*

*Adult Services Manual (ASM) 105, 11-1-11, addresses HHS eligibility requirements:*

### **Requirements**

Home help eligibility requirements include all of the following:

- Medicaid eligibility.
- Certification of medical need.
- Need for service, based on a complete comprehensive assessment (DHS-324) indicating a functional limitation of level 3 or greater for activities of daily living (ADL).
- Appropriate Level of Care (LOC) status.

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## **Necessity for Service**

The adult services specialist is responsible for determining the necessity and level of need for home help services based on:

- Client choice.
- A completed DHS-324, Adult Services Comprehensive Assessment. An individual must be assessed with at least one activity of daily living (ADL) in order to be eligible to receive home help services.

**Note:** If the assessment determines a need for an ADL at a level 3 or greater but these services are not paid for by the department, the individual would be eligible to receive IADL services.

**Example:** Ms. Smith is assessed at a level 4 for bathing however she refuses to receive assistance. Ms. Smith would be eligible to receive assistance with IADL's if the assessment determines a need at a level 3 or greater.

- Verification of the client's medical need by a Medicaid enrolled medical professional via the DHS-54A. The client is responsible for obtaining the medical certification of need; see ASM 115, Adult Services Requirements.

*Adult Services Manual (ASM) 105,  
11-1-2011, Pages 1-3 of 3*

Adult Services Manual (ASM 120, 5-1-2012), pages 1-4 of 5 addresses the adult services comprehensive assessment:

## **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 will 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; see RFF 1555. The form is primarily used for APS cases.
  - Follow rules of confidentiality when home help cases have companion APS cases, see SRM 131 Confidentiality.

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## 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 3 level 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.

**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 IADLs if the assessment determined a need at a level 3 or greater.

See ASM 121, Functional Assessment Definitions and Ranks for a description of the rankings for activities of daily living and instrumental activities of daily living.

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### **Time and Task**

The specialist will allocate time for each task assessed a rank of 3 or higher, based on interviews with the client and provider, observation of the client's abilities and use of the reasonable time schedule (RTS) as a **guide**. The RTS can be found in ASCAP under the Payment module, Time and Task screen. When hours exceed the RTS rationale **must** be provided.

An assessment of need, at a ranking of 3 or higher, does not automatically guarantee the maximum allotted time allowed by the reasonable time schedule (RTS). **The specialist must assess each task according to the actual time required for its completion.**

**Example:** A client needs assistance with cutting up food. The specialist would only pay for the time required to cut the food and not the full amount of time allotted under the RTS for eating.

### **IADL Maximum Allowable Hours**

There are monthly maximum hour limits on all instrumental activities of daily living except medication. The limits are as follows:

- Five hours/month for shopping
- Six hours/month for light housework
- Seven hours/month for laundry
- 25 hours/month for meal preparation

## Proration of IADLs

If the client does not require the maximum allowable hours for IADLs, authorize only the amount of time needed for each task. Assessed hours for IADLs (except medications) must be prorated by **one half** in shared living arrangements where other adults reside in the home, as home help services are **only** for the benefit of the client.

**Note:** This does not include situations where others live in adjoining apartments/flats or in a separate home on shared property and there is no shared, common living area.

In shared living arrangements, where it can be **clearly** documented that IADLs for the eligible client are completed separately from others in the home, hours for IADLs do not need to be prorated.

**Example:** Client has special dietary needs and meals are prepared separately; client is incontinent of bowel and/or bladder and laundry is completed separately; client's shopping is completed separately due to special dietary needs and food is purchased from specialty stores; etc.

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

Specific to the issues here regarding mobility and transferring, policy states in part:

**Transferring** - Moving from one sitting or lying position to another. Assistance from the bed or wheelchair to the sofa, coming to a standing position and/or repositioning to prevent skin breakdown.

No assistance required.

Client is able to transfer but requires encouragement or direction.

Minimal hands-on assistance needed from another person for routine boosts or positioning. Client unable to routinely transfer without the help of another or assistive technology such as a lift chair.

Requires direct hands-on assistance with most aspects of transferring. Would be at risk if unassisted.

Totally dependent on others for all transfers. Must be lifted or mechanically transferred.

**Mobility** - Walking or moving around inside the living area, changing locations in a room, assistance with stairs or maneuvering around pets, or obstacles including uneven floors.

No assistance required even though the client may experience some difficulty or discomfort. Completion of the task poses no risk to safety.

Client is able to move independently with only reminding or encouragement. For example, needs reminding to lock a brace, unlock a wheelchair or to use a cane.

Minimal hands-on assistance required for specific maneuvers with a wheelchair, negotiating stairs or moving on certain surfaces. Without the use of a walker or pronged cane, client would need physical assistance.

Requires hands-on assistance from another person with most aspects of mobility. Would be at risk if unassisted.

Totally dependent on other for all mobility. Must be carried, lifted or pushed in a wheelchair or gurney at all times.

Here, the Respondent argues that the changes were based on in-person functional observations despite the dated medical documentation submitted by Petitioner. The Respondent also argues that proration is mandated by federal and state law.

Petitioner argues that he is disabled, needs the help 24-7, that Hillsdale County where he previously resided did not apply the proration policy, and that he has a MSHDA reasonable accommodation determination notice approved an extra bedroom for a liv-in-aide. (Exhibit A.10). Petitioner also argues that the ASW does not have the authority to make an assessment that is contrary to his doctors' statements regarding his eligibility for the HHS program.

The purview of an administrative law judge (ALJ) is to review the Department's action and to make a determination if those actions are in compliance with Department policy, and not contrary to law. The reviewing forum is required to focus on the action taken at the time it took the action. Moreover, the reviewing forum is required to base the decision on the evidence of record.

As noted by the Respondent, Petitioner was in fact approved more hours than he is awarded due to the fact that Respondent was required to reduce his grant based on the proration policy, due to a shared household. The Department is required under law and policy to prorate IADLs in such instances.

Petitioner argues that the previous county he resided in did not apply the policy. A review of the evidence here, and the policy, clearly shows that Petitioner is not entitled to his entire hours where there is an able adult sharing the household; federal law prohibits the use of Medicaid monies for able bodied individuals in such instances. If there was an error on the part of prior assessment, such is not grounds upon which Petitioner may prevail.

As to the MSHDA statement, as it is not recognized as an exception to the proration policy, it is irrelevant.

As to the Petitioner's objection that the ASW is not a medically trained individual, Petitioner is correct. And in fact, the Respondent's policy sanctioned by the federal law gives the ASW extraordinary discretion in making a functional assessment, even if is not entirely consistent with, here, Petitioner's dated medical documentation.

As to Petitioner's objection to obtain current medical documentation, the Department's request is not contrary to policy. In fact, failure of the Department to have medical documentation in a beneficiary's file can subject the State of Michigan to significant financial penalties.

As to the removal of mobility and transferring, this action was supported by the evidence of record compiled by the Respondent during the in home functional assessment.

After a careful review of the credible and substantial evidence on the whole record, this ALJ finds that the Department's actions were in compliance with its policy, and supported by the documentary and testimonial evidence taken as a whole at the time the Department made its determination. Thus, the Department's reduction must be upheld.

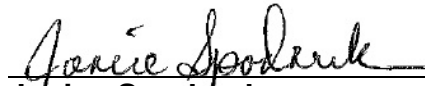
**DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department's reduction in Petitioner's HHS grant was correct based on the available evidence and thus,

**IT IS, THEREFORE, ORDERED** that:

The Department's decision is **AFFIRMED**

JS/cg



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**Janice Spodarek**

Administrative Law Judge

for Nick Lyon, Director

Department of Health and Human Services

**NOTICE OF APPEAL:** A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings  
Reconsideration/Rehearing Request  
P.O. Box 30763  
Lansing, Michigan 48909-8139

**DHHS**

[REDACTED]

**Petitioner**

[REDACTED]

**DHHS Department Rep.**

[REDACTED]

**DHHS -Dept Contact**

[REDACTED]

**Agency Representative**

[REDACTED]