

**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. 15-020660 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, a hearing was held on ██████████. Appellant's father and Legal Guardian, ██████████, appeared and testified on Appellant's behalf. ██████████, Appeals Review Officer, represented the Department of Health and Human Services (the Department). ██████████, Adult Services Worker appeared and testified as a witness for the Department.

State's Exhibit A pages 1-31 were admitted as evidence.

ISSUE

Did the Department properly deny Appellant's request for additional Home Help Services (HHS)?

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

1. Appellant is a Medicaid beneficiary who receives SSD benefits.
2. Appellant's Date of Birth is ██████████.
3. Appellant is diagnosed with: severe brain damage, tracheoesophageal fistula, chronic lung disease, encephalopathy, epilepsy, cognitive impairment and tube feeding.
4. Appellant is wheelchair bound and needs complete care as she is unable to talk. She has no mental orientation or comprehension.
5. Appellant requires assistance with eating, toileting, bathing, grooming, dressing, transferring, mobility, taking medications, meal preparation,

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shopping, laundry and housework. (State's Exhibit A page 16)

6. On [REDACTED], the Adult Services Worker conducted an in-home assessment with Appellant and her father.
7. The Adult Services Worker (ASW) determined that Appellant should have a ranking of '3' for bathing, grooming, dressing, toileting, transferring, eating, mobility, medication, housework, laundry, shopping and meal preparation. The ASW determined that Appellant should be ranked a level '1' for continence and respiration. (State's Exhibit A page 16)
8. On [REDACTED], the ASW sent Appellant a Services and Payment Approval Notice (DHS-1210) with a start date of [REDACTED], the date authorized by Provider enrollment.
9. Appellant was approved for \$ [REDACTED] per month in monthly Home Help Services grant for a total of 93 hours and 47 minutes for bathing, grooming, dressing, toileting, transferring, eating, mobility, medication, housework, laundry, shopping and meal preparation.
10. On [REDACTED], the Michigan Administrative Hearing System (MAHS) received Appellant's Request for Hearing. In that request, Appellant's Guardian indicates that due to Appellant's severe physical and cognitive condition she should be approved for the maximum amount allowed. She requires 24 hour care. The service should be retroactive to [REDACTED] when they applied for services. (State's Exhibit A page 4)
11. On [REDACTED], the hearing was held.
12. The ASW conceded on the record that Appellant should have been scored a '5' for all of Activities of Daily Living (ADLs) and Incidental Activities of Daily Living (IADLs).

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.

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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 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.

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- 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. 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.
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.

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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. 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.

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- 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.**

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)

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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.

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 \$ [REDACTED].

In the instant case, Appellant's needs are so extensive that the cost of care cannot be met within the monthly maximum payment level. Appellant does have complex care needs and a complex care assessment should have been conducted to determine Appellant's appropriate level of care for services. Appellant should be eligible for Expanded Home Help Services.

Appellant is diagnosed with: severe brain damage, tracheoesophageal fistula, chronic lung disease, encephalopathy, epilepsy, cognitive impairment and tube feeding.

Appellant is wheelchair bound and needs complete care as she is unable to talk. She has no mental orientation or comprehension. She has muscle atrophy and stiffness. Her clothing has to be washed separately due to being soiled with urine and feces. (State's Exhibit A page 12)

Appellant requires assistance with eating, toileting, bathing, grooming, dressing, transferring, mobility, taking medications, meal preparation, shopping, laundry and housework. (State's Exhibit A page 16)

Appellant's representative has established through medical diagnosis and credible testimony that Appellant is a quadriplegic and requires complete care as she has no mental orientation or comprehension, which is not accounted for in the ASW's assessment for level of HHS services. The Department's determination of the level of services for Appellant cannot be upheld under the circumstances.

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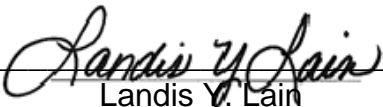
The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department failed to appropriately conduct a Complex Care Assessment and did not properly assess Appellant's level of care rankings.

IT IS THEREFORE ORDERED THAT:

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

If Appellant is otherwise eligible benefits the Department is **ORDERED** to:

1. Perform a complex care assessment and properly assess Appellant's level of care rankings;
2. Properly determine her condition and level of care needs for all ADLs and IADLs effective the date of Provider enrollment approval and;
3. Pay to Appellant all retroactive benefits to which she is entitled, effective the date of Provider enrollment approval.


Landis V. Lair

Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Health and Human
Services

LYL [REDACTED]

Date Mailed: February 2, 2016

cc: [REDACTED]

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***** 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 March 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.