

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

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IN THE MATTER OF:

██████████

Appellant

Docket No. 15-021161 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 Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. ██████████, the Appellant, appeared on her own behalf. ██████████, Daughter, appeared as a witness for Appellant. ██████████, Appeals Review Officer, represented the Department of Health and Human Services (Department). ██████████, Adult Services Worker (ASW) appeared as a witness for the Department.

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 Medicaid beneficiary who has been authorized for HHS. (Department Exhibit A, p. 18)
2. Appellant's granddaughter is her enrolled HHS provider. (Department Exhibit A, pp. 10-11 and 17-19)
3. The Department has received medical certification that Appellant has been diagnosed with knee osteoarthritis, hypertension, diabetes, chronic back pain, sarcoidosis, and LVH. (Department Exhibit A, p. 13)
4. As of a ██████████, admission, Appellant had active medical problems of hypertension, diabetes, hyperlipidemia, arthritis, reflux, degenerative joint disease, and at risk of falls. (Appellant Exhibit 1, p. 1)
5. On ██████████, the Department's ASW went to Appellant's home to conduct a reassessment. There was some discussion about the tasks Appellant needs assistance with, who all provides assistance, and how often assistance is provided. (Department Exhibit A, pp. 10 and 15-16;

ASW Testimony)

6. On [REDACTED], the Department sent Appellant an Advance Negative Action Notice informing her that the HHS authorization would be reduced to \$ [REDACTED] effective [REDACTED]. (Department Exhibit A, pp. 7-9)
7. Appellant's Request for Hearing was received by the Department on [REDACTED], and by the Michigan Administrative Hearing System on [REDACTED]. (Department Exhibit A, p. 4)

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, 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,
December 1, 2013, Page 1 of 5*

Adult Services Manual (ASM) 105, 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 indicating a functional limitation of level 3 or greater for activities of daily living (ADL).
- Appropriate Level of Care (LOC) status.

Necessity For Service

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

- 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 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.

- 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,
April 1, 2015, Pages 1-4 of 4

Adult Services Manual (ASM) 120, 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. This form is primarily used for APS cases.
- Follow rules of confidentiality when home help cases have companion APS 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 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 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.

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, 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) 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.

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.

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Certain services are not covered by HHS. ASM 101 provides a listing of the services not covered by HHS.

Services not Covered by Home Help

Home help services must not be approved for the following:

- Supervising, monitoring, reminding, guiding, teaching or encouraging (functional assessment rank 2).
- Services provided for the benefit of others.
- Services for which a responsible relative is able and available to provide (such as house cleaning, laundry or shopping). A responsible relative is defined as an individual's spouse or a parent of an unmarried child under age 18.
- Services provided by another resource at the same time (for example, hospitalization, MI-Choice Waiver).
- Transportation - See Bridges Administrative Manual (BAM) 825 for medical transportation policy and procedures.
- Money management such as power of attorney or representative payee.
- Home delivered meals.
- Adult or child day care.
- Recreational activities. (For example, accompanying and/or transporting to the movies, sporting events etc.)

Note: The above list is not all inclusive.

Adult Services Manual (ASM) 101, December 1, 2013,
Pages 3-4 of 5.

In her testimony, the ASW explained that the functional ranking notes contain the information Appellant reported during the home visit, even if some of the statements Appellant made were somewhat contradictory. For example, regarding bathing, the ASW noted that Appellant reported: she needs monitoring; she does this independently; her children monitor her when they come over; and they assist her with getting in/out of the shower so she does not fall. (Department Exhibit A, p. 15; ASW Testimony) The ASW also explained that she added grooming to the time and task authorization based on Appellant's report that she occasionally needs help with her toe nails. (Department Exhibit A, p. 15; ASW Testimony) The ASW stated that for each of the authorized tasks, she asked Appellant how often assistance is provided. The ASW then adjusted the days per week for these tasks accordingly. This led to an overall reduction in Appellant's HHS authorization. (Department Exhibit A, pp. 16 and 19; ASW Testimony; ARO Testimony)

However, the ASW also explained that for the IADLs, she only reduced the days per week, and did not adjust the minutes per day, because she understood the daily

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minutes from the RTS were maximums allowed by policy. For example, regarding shopping, the ASW indicated the authorized 10 minutes 2 days per week was not her determination of the reasonable amount of time to complete this task. Rather, the ASW understood this activity was done about twice per week and the 10 minutes per days is a policy maximum for this activity. (Department Exhibit A, p. 19; ASW Testimony)

Appellant and her daughter's testimony indicated there were misunderstandings and/or miscommunications during the assessment. For example, Appellant is a diabetic and a doctor takes care of her toe nails. It was also noted that the apartment is very small so the ASW would not have observed Appellant walking for more than about five feet without assistance from others or an aid. (Appellant and Daughter Testimony) However, Appellant's testimony during this hearing was at times inconsistent regarding what she reported to the ASW. For example, Appellant's initial testimony indicated she understated her needs for assistance during the home visit because she wanted to feel independent. (Appellant Testimony) While this is understandable, the ASW considered what was reported when determining Appellant's ongoing needs for services. It is also noted that Appellant's later testimony was consistent with some of the ASW's functional ranking notes, such as Appellant occasionally receiving help from other family members with some activities. (Department Exhibit A, pp. 15-16; Appellant Testimony) As discussed during the hearing proceedings, it is important that Appellant accurately reports her true needs for assistance during home visit assessments because the Department will consider what the Appellant reports when determining the appropriate ongoing HHS authorization.

Overall, the evidence establishes that an error was made at least regarding the time authorized for IADL tasks, such as shopping. The ASW's testimony indicated the approved 10 minutes twice per week was based on her understanding that there were daily maximum times allowed by policy, not that this was a reasonable amount of time for Appellant's actual needs for assistance with this activity. The ASM 120 policy sets for monthly maximum hours for these IADL tasks, but does not state that the minutes suggested by the RTS, which is based on time being allocated for this task being performed daily, are also maximums. In other words, as long as the total monthly hours, "time/mon", for the IADL task are within the monthly maximum, the policy does not preclude increasing the "time/day" minutes to an amount that is reasonable for the Appellant's needs for assistance with this activity when the "days/wk" is less frequent than 7. Additionally, there was clearly a miscommunication regarding grooming based on the testimony that Appellant's toe nails taken care of by a doctor, not her granddaughter. Therefore, it appears that there was no need for grooming hours to be added to Appellant's HHS authorization.

The preponderance of the evidence in this case establishes that this assessment and resulting reduction in Appellant's HHS authorization were improper. At least part of the reduction to Appellant's HHS authorization was not in accordance with Department policy regarding the RTS being used as a guide and IADL tasks having monthly maximum hours, not daily maximum minutes. Additionally, the testimony indicates that there is no actual need for the HHS provider to assist with the grooming task of toe nail

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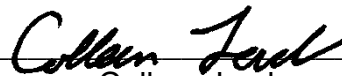
care because Appellant's doctor performs this activity due to Appellant's medical condition.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that, based on the available information, the Department improperly reduced Appellant's HHS.

IT IS THEREFORE ORDERED THAT:

The Department's decision is **REVERSED**. Appellant's HHS case shall be re-assessed in accordance with Department policy. The Department shall issue written notice of the determination in accordance with Department policy.



Colleen Lack

Administrative Law Judge
for Nick Lyon, Director

Michigan Department of Health and Human
Services

CL/ 

Date Mailed: February 1, 2016

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.