

**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. 15-023093 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 appeared and testified. Appellant's provider, Lawrence Hill, also appeared and testified on Appellant's behalf. ██████████, Appeals Review Officer; ██████████, Adult Services Supervisor; ██████████, Independent Living Specialist and ██████████, Independent Living Specialist appeared and testified on behalf of the Department of Health and Human Services (Department).

Respondent's Exhibit A pages 1-37 were admitted as evidence without objection.

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, date of birth ██████████. (State's Exhibit A page 11)
2. Appellant is diagnosed with: right leg amputation, diabetes, hypertension, hyperlipidemia, vertigo, Gastro esophageal reflux disease, shoulder/back problems, obesity, bedsores, memory problems, rotator cuff strains, and decubitus ulcers. (State's Exhibit A page 13 and page 19)
3. On ██████████, the Department received Appellant's DHS 54A Medical Needs form which indicated that Appellant has a certified medical need for assistance with toileting, bathing, dressing, transferring, mobility,

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taking medication, meal preparation, shopping, laundry and housework. (State's Exhibit A page 19)

4. Appellant was receiving \$ [REDACTED], for assistance with dressing, eating, mobility, medication, housework, laundry, shopping, meal preparation, transferring and bathing. (State's Exhibit A page 17)
5. Appellant was scored functional abilities rankings as follows: Bathing 3, Dressing 4, transferring 3, Eating 3, medication 3, housework 5, laundry 5, shopping 5 and meal preparation 5. (State's Exhibit A page 14)
6. On [REDACTED], the Department caseworker conducted a home visit with the Appellant and her provider. The caseworker determined that Appellant no longer needed help with eating or dressing herself. (State's Exhibit A page 15)
7. On [REDACTED], the Department Caseworker sent Appellant an Advance Negative Action Notice stating that Appellant's HHS would be reduced to \$ [REDACTED] per month. The reason for this action is: Client does not need help bathing or eating any longer per the last home visit completed. (State's Exhibit A page 5)
8. On [REDACTED], the proposed Time and Task Assignments totaled 27:40 or \$ [REDACTED] per month for assistance with dressing, medication, housework, laundry, shopping, meal preparation and transferring. (State's Exhibit A page 6)
9. On [REDACTED], the proposed total dollar amount authorized was \$ [REDACTED] (\$ [REDACTED] gross). The reason given: A review of services with the client and provider indicates that minimal assistance with eating (pushing food towards the client an opening her milk) and bathing (helping the client in and out of the bath tub only with supervision while client bathes herself) is provided at this time. (State's Exhibit A pages 8-9)
10. On [REDACTED], the Michigan Administrative Hearing System (MAHS) received Appellant's Request for Hearing.

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.

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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 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.

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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. 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.

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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.

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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. 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

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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.**

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.

Responsible Relatives

A responsible relative is defined as an individual's spouse or a parent of an unmarried child under age 18.

Activities of daily living (ADL) may be approved when the responsible relative is **unavailable** or **unable** to provide these services.

Note: Unavailable means absence from the home for an extended period due to employment, school or other legitimate reasons. The responsible relative must provide a work or school schedule to verify they are unavailable to provide care. **Unable** means the responsible person has disabilities of their own which prevent them from providing care. These disabilities must be documented and verified by a medical professional on the DHS-54A, Medical Needs form.

Do **not** approve shopping, laundry, or light housecleaning, when a responsible relative of the client resides in the home, **unless** they are unavailable or unable to provide these

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services. Document findings in the general narrative in ASCAP.

Example: Mrs. Smith is in need of home help services. Her spouse is employed and is out of the home Monday thru Friday from 7a.m. to 7p.m. The specialist would not approve hours for shopping, laundry or house cleaning as Mr. Smith is responsible for these tasks.

Example: Mrs. Jones is in need of home help services. Her spouse's employment takes him out of town Monday thru Saturday. The specialist may approve hours for shopping, laundry or house cleaning.

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 \$██████████ for **any** reason, the adult services specialist must submit a written request for approval to the Michigan Department of Community Health (MDCH).

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 Health and Human Services
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 Department caseworker notes from ██████████ indicate that Appellant is in the wheelchair more often as she finds the prosthetic leg too heavy to walk with. She has fallen and had a difficult time getting up when this happened. She can eat by herself and bathe herself with the help of a shower bench. She needs assistance with moving from her chair to standing or to another location. She continues

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to need housework, laundry, shopping and meal preparation every day. (State's Exhibit A page 14)

Appellant has been scored a '2' ranking for mobility and a '1' ranking for toileting. Yet, she uses a wheelchair to get around. Policy clearly states:

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.

Note: Assistive technology includes such items as walkers, wheelchairs, canes, reachers, lift chairs, bath benches, grab bars and hand held showers.

The Department caseworker incorrectly scored Appellant a '2' for mobility and a '1' for toileting. Without her wheelchair, Appellant would need hands-on care to perform either of these tasks. Without assistive technology, Appellant cannot perform the tasks of toileting, mobility, bathing or transferring. Since she needs her food cut up and her milk opened, she cannot perform these tasks without hands-on assistance.

Appellant's provider testified that he has modified the home to allow Appellant to get around better in her wheelchair, but she is elderly and still needs assistance.

This Administrative Law Judge finds Appellant's Representative's testimony to be credible under the circumstances. Based on the evidence presented, Appellant's representative has established, by a preponderance of the evidence, that Appellant may require more HHS than she was approved for.

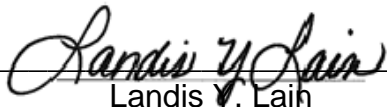
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The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department did not establish by the necessary competent, material and substantial evidence on the record that it was acting in compliance with Department policy when it reduced Appellant's HHS for eating and meal preparation.

IT IS THEREFORE ORDERED THAT:

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

1. The Department is **ORDERED** to determine Appellant's appropriate level of care for eating, mobility, toileting, and bathing, as well as all other tasks, in accordance with Department policy.
2. The Department is **ORDERED** to reinstate Appellant's HHS to the original level before [REDACTED] and pay to Appellant all supplemental HHS to which she is entitled.
3. Appellant is entitled to an increase in the level of care for mobility and toileting. The Department is **ORDERED** to pay to Appellant's caregiver the appropriate amount in compliance with department policy from the date of the original reduction forward.


Landis V. Lain

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

LYL [REDACTED]

cc: [REDACTED]

Date Mailed: March 1, 2016

***** 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 must 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.