

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

P.O. Box 30763, Lansing, MI 48909
(800) 648-3397; Fax: (517) 373-4147

IN THE MATTER OF:

██████████

Appellant

_____ /

Docket No. 15-020857 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. ██████████, Care Provider, and ██████████, Executive Director Partners in Personal Assistance, appeared as witnesses 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. ██████████, Adult Services Specialist, was also present.

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, pp. 13-14)
2. Appellant has been diagnosed with debility. It was also reported that Appellant has asthma, incontinence, hypertension, morbid obesity, borderline diabetes, and osteoarthritis. (Department Exhibit A, p. 12)
3. On ██████████, the Department's ASW went to Appellant's home to conduct a reassessment. During the assessment, Appellant reported that the HHS provider was coming twice per week. Appellant requested additional hours for toileting to allow for daily cleaning of the commode. (Department Exhibit A, pp. 9-10)
4. On ██████████, the Department sent Appellant an Advance Negative Action Notice informing her that the HHS authorization would be reduced to \$ ██████████ effective ██████████. (Department Exhibit A,

pp 5-8)

5. Appellant's Request for Hearing was received 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) 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.

*Adult Services Manual (ASM) 120, December 1, 2013,
Pages 1-6 of 7 (emphasis in original)*

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:

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- 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.

The ASW's testimony indicated that at least part of the reduction was based on adjusting the time and task authorization to reflect that Appellant's caregiver only comes twice per week and the RTS sets maximum times for each task by functional ranking. (ASW Testimony)

In her testimony, the ASW emphasized her understanding of how the RTS sets for the reasonable maximums allowed. The ASW asserted that with the 1,200 clients receiving HHS in her county, if the time was taken to ask each of them how long it takes to complete a specific task, such as bathing, there would be 1,200 different answers. Accordingly, the ASW asserted that the RTS was created to give standard times for the functional rankings for each of the tasks. (ASW Testimony)

The above cited ASM 120 policy does not support the ASW's understanding of how the RTS is to be utilized. The ASM 120 policy itself emphasizes that the RTS is only to be used as a guide and the specialist is required to assess each task according to the actual time required for its completion.

Additionally, the ASW initially testified that policy would not allow her to approve Appellant's request to have HHS hours added for toileting to allow for daily cleaning of the commode. The ASW indicated policy would not allow for time to be added such that the toileting hours were the only task for a day. Specifically, that the policy is not to send someone in just to empty the commode, the person would have to have to do

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other tasks also. However, the ASW later testified that it was not really the policy prohibiting such an authorization, just the practical expectation that a provider would not go out all the way out to Appellant's house just for 15 minutes to empty/clean the commode. (ASW Testimony)

The ASW also testified that she had concerns about Appellant's actual need for assistance with emptying/cleaning the commode in light of her understanding of Appellant's ability to do some tasks herself, such as making mashed potatoes and changing the cat litter. (ASW Testimony)

Appellant testified that the ASW did not ask the details of how she performs such tasks independently. For example, Appellant explained that when she boils potatoes, her sink is right next to the stove so Appellant can just slide the pot to the counter and to the burner. Regarding the cat litter, Appellant explained that she has the type of cat litter box that is tall, covered, and has filter and drawer set up to sift the litter. Appellant only has to tilt the cat box to sift the litter and empty the material from the small drawer. (Appellant Testimony) Accordingly, it does not appear that the ASW asked sufficient questions about how Appellant performs these tasks to consider them as a basis for determining Appellant's needs for assistance with ADLs and IADLs.

Appellant and her caregiver's testimony indicated they were using the full 23 hours and 38 minutes previously authorized, just over 2 days per week instead of the 3-7 days indicated on the time and task authorization. They indicated that the caregiver was appropriately multitasking, such as going to the building next door to start laundry, then cleaning in Appellant's apartment while the laundry cycle ran. (Appellant Testimony)

The Executive Director asked if there was any problem with adjusting the time/day and days/week the work is done so long as the work done is still only for the tasks authorized and the same total of monthly hours authorized. (Executive Director Testimony) In part, the ASW indicated her local Department office is looking into changing the authorization of HHS hours for some IADLs in a similar manner. For example, with shopping it is unlikely that the 10 minutes 7 days per week authorized is how anyone would actually complete this task. They may change to authorizations of 1 hour and 10 minutes once per week. (ASW Testimony) Accordingly, it appears that the Department has recognized that at least with some tasks, the monthly total authorizations for HHS hours are actually being utilized with an adjusted minutes per day and days per week combination. So long as it is the same tasks and total monthly hours for each activity being authorized, it does not appear that the ASM policy would be prohibit such adjustments to how the services are actually being provided.

Overall, the preponderance of the evidence in this case establishes that the reduction to Appellant's HHS authorization was inappropriate because the ASW's assessment and resulting determination to reduce the HHS authorization were not in accordance with Department policy.

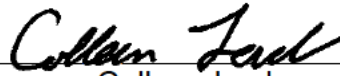
[REDACTED]
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DECISION AND ORDER

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/ [REDACTED]

Date Mailed: February 2, 2016

cc: [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 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.