

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**
P.O. Box 30763, Lansing, MI 48909
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IN THE MATTER OF:

Docket No. 2012-15927 HHS

██████████
Appellant
_____ /

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ) 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 ██████████. ██████████ represented herself.

Mrs. ██████████, Appeals and Review Officer for the Department of Community Health, represented the Department. ██████████, Adult Services Worker was present as a Department witness.

ISSUE

Did the Department properly terminate Home Help Services (HHS) payments to the Appellant?

FINDINGS OF FACT

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

1. The Appellant is a Medicaid beneficiary who has been receiving adult Home Help Services.
2. The Appellant is diagnosed with coronary artery disease, high blood pressure and GERD.
3. The Appellant has been receiving assistance with housework, shopping, laundry and meal preparation through the Home Help Services program.
4. The Appellant's case was due for redetermination, resulting in a home call from the Department's worker.
5. The Department of Human Services Specialist made a home call on ██████████ ██████████, to complete an assessment following implementation of new Department policy.

6. The Department Specialist determined the Appellant was still able to perform her activities of daily living without physical assistance, thus was no longer eligible to receive payment assistance for her instrumental activities of daily living due to the change in policy.
7. The Department sent the Appellant an Advance Negative Action Notice [REDACTED], informing her of the termination of HHS benefits, effective [REDACTED].
8. The Appellant appealed the determination [REDACTED].

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 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.

ELIGIBILITY FOR HOME HELP SERVICES

Home help services (HHS) are defined as those, which the Agency is paying for through Title XIX (Medicaid) funds. The customer must be eligible for Medicaid in order to receive these services.

Medicaid/Medical Aid (MA)

Verify the customer's Medicaid/Medical aid status.

The customer may be eligible for MA under one of the following:

- All requirements for MA have been met, **or**
- MA spend-down obligation has been met.

Adult Services Manual (ASM) 9-1-2008

Necessity For Service

The adult services worker is responsible for determining the necessity and level of need for HHS based on:

- Customer choice.
- A complete comprehensive assessment and determination of the customer's need for personal care services.

- Verification of the customer's medical need by a Medicaid enrolled medical professional. The customer is responsible for obtaining the medical certification of need. The Medicaid provider identification number must be entered on the form by the medical provider. The Medical Needs form must be signed and dated by one of the following medical professionals:

- Physician
- Nurse Practitioner
- Occupational Therapist
- Physical Therapist

The physician is to certify that the customer's need for service is related to an existing medical condition. The physician does not prescribe or authorize personal care services.

If the Medical Needs form has not been returned, the adult services worker should follow-up with the customer and/or medical professional.

COMPREHENSIVE ASSESSMENT

The Adult Services Comprehensive Assessment (DHS-324) is the primary tool for determining need for services. The comprehensive assessment will be completed on all open cases, whether a home help payment will be made or not. ASCAP, the automated workload management system provides the format for the comprehensive assessment and all information will 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.
- A face-to-face contact is required with the customer in his/her place of residence.
- An interview must be conducted with the caregiver, if applicable.
- Observe a copy of the customer's social security card.
- Observe a picture I.D. of the caregiver, if applicable.
- The assessment must be updated as often as necessary, but minimally at the six month review and annual re-determination.
- A release of information must be obtained when requesting documentation from confidential sources

and/or sharing information from the department record.

- Follow specialized rules of confidentiality when ILS cases have companion APS cases.

Functional Assessment

The **Functional Assessment** module of the **ASCAP** comprehensive assessment is the basis for service planning and for the HHS payment.

Conduct a functional assessment to determine the customer'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
- Housework

Functional Scale ADL's and IADL's 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.

Note: HHS payments may only be authorized for needs assessed at the 3 level or greater.

Time and Task

The worker will allocate time for each task assessed a rank of 3 or higher, based on the 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.

IADL Maximum Allowable Hours

There are monthly maximum hour limits on all IADLs 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.

These are maximums; as always, if the client needs fewer hours, that is what must be authorized. Hours should continue to be prorated in shared living arrangements. If there is a need for expanded hours, a request should be submitted to:

Service Plan Development

Address the following factors in the development of the service plan:

- The specific services to be provided, by whom and at what cost.
- The extent to which the Client does not perform activities essential to the caring for self. The intent of the Home Help program is to assist individuals to function as independently as possible. It is important to work with the recipient

and the provider in developing a plan to achieve this goal.

- The kinds and amounts of activities required for the client's maintenance and functioning in the living environment.
- The availability or ability of a responsible relative or legal dependent of the client to perform the tasks the client does not perform. Authorize HHS only for those services or times which the responsible relative/legal dependent is unavailable or unable to provide.

Note: Unavailable means absence from the home, for employment or other legitimate reasons. Unable means the responsible person has disabilities of his/her own which prevent caregiving. These disabilities must be documented/verified by a medical professional on the DHS-54A.

- Do not authorize HHS payments to a responsible relative or legal dependent of the client.
- The extent to which others in the home are able and available to provide the needed services. Authorize HHS only for the benefit of the client and not for others in the home. If others are living in the home, prorate the IADL's by at least 1/2, more if appropriate.
- The availability of services currently provided free of charge. A written statement by the provider that he is no longer able to furnish the service at no cost is sufficient for payment to be authorized as long as the provider is not a responsible relative of the client.
- HHS may be authorized when the client is receiving other home care services if the services are not duplicative (same service for the same time period).

Adult Services Manual (ASM) 9-1-2008

The Department issued an Interim Policy Bulletin effective October 1, 2011. It states in pertinent part:

Home Help Eligibility Criteria

To qualify for home help services, an individual must require assistance with at least one activity of daily living (ADL) assessed

at a level 3 or greater. The change in policy must be applied to any new cases opened on or after October 1, 2011, and to all ongoing cases as of October 1, 2011.

Comprehensive Assessment Required Before Closure

Clients currently receiving home help services must be assessed at the next face to face contact in the client's home to determine continued eligibility. If the adult services specialist has a face to face contact in the client's home prior to the next scheduled review/redetermination, an assessment of need must take place at that time.

Example: a face to face review was completed in August 2011; the next scheduled review will be in February 2012. The specialist meets with the client in his/her home for a provider interview in December 2011. Previous assessments indicate the client only needing assistance with instrumental activities of daily living (IADL). A new comprehensive assessment must be completed on this client.

If the assessment determines a need for an ADL at level 3 or greater but these services are not paid for by the department, or the client refuses to receive assistance, the client would continue to be eligible to receive IADL services.

If the client is receiving only IADLs and does not require assistance with at least one ADL, the client no longer meets eligibility for home help services and the case must close after negative action notice is provided.

DHS Interim Policy Bulletin 10/1/11

The Department presented written evidence and testimony in support of its determination in this case. The worker who completed the evaluation was employed in a new position and not present for hearing. Another worker who had reviewed the file and was familiar with the documents therein provided the testimony explaining the Department's determination.

In this case the evidence of record establishes the worker did conduct a comprehensive assessment at the ██████████, home call. The Department evidence included narrative notes entered by the worker who performed the comprehensive assessment. She was informed by the Appellant at the assessment that she needed assistance washing and caring for her hair. She explained it hurt her side to do it for herself. The worker indicated she was informed by the provider that she does not do her mother's hair and that her mother is capable of doing things for herself. The worker thereafter noted there is nothing in the medical evidence to support a claim of motor skill deficit or medical reason supporting the Appellant's claim that she requires physical assistance to wash and care for her own hair. She determined grooming should not be

Docket No. 2012-15927 HHS
Decision and Order

ranked as a 3 in the functional ratings. She thereafter sent the negative action notice of termination based upon the new criteria enacted by the Department.

The Appellant's testimony was taken at hearing. She said she still requires help with housework, laundry, shopping and errands. She added that she requires help with her hair. She asserted her daughter does this for her and has been for 6 months. She explained, when asked, she cannot bend over to wash her hair due to back pain. She was then asked if she could wash it while in the shower. She then stated that would still require her to bend her head somewhat and that it bothers her when she has to put her hands up. She further asserted she had informed her previous worker of the hair washing issue and her worker said she would send her a medical needs form to have the doctor complete but she never did.

The evidence of record does not establish the Department's determination was incorrect or not supported by its own policy. Here, the Appellant had not been receiving assistance with any activity of daily living prior to her most recent assessment. There was no credible evidence her medical or physical condition had changed. The worker did complete a new assessment in accordance with the Department policy, which had changed since her last assessment. When the Appellant specifically stated she required assistance with her hair, the worker assessed for that need. She inquired about why the Appellant was unable to do it for herself and was provided an explanation. She looked to the medical documentation to support the new claim and found none. She made a determination that the claim was not supported by sufficient medical evidence to be reliable and also was informed by the Appellant's provider that she did not actually perform the task, thus she determined the Appellant was capable of doing it for herself. This ALJ finds this evidence is credible and sufficient to support the Department's determination. This ALJ did listen to the testimony from the Appellant. It was not persuasive and also does not evidence a need to have physical assistance with hair washing. This ALJ agrees with the worker that experiencing some discomfort, or in the words of the Appellant, being bothered when raising her arms to wash her hair is not an indication of inability to perform the task for oneself. Perhaps if there were medical evidence to support at least one of the claims from the Appellant about her sides hurting her and her back hurting her, more weight could be given her testimony. But here, where her daughter contradicts her and the medical evidence does not support either of her claims, this ALJ cannot find it is effective to refute the evidence presented by the Department.

The eligibility requirements are more stringent than before. The Department no longer provides home help assistance benefits to those who require physical assistance with instrumental activities of daily living only, even medication administration, as evidenced by its new policy. This ALJ has no authority to disregard the policy or make exceptions.

The policy clearly requires hands on assistance for an activity of daily living in order to continue receiving assistance with instrumental activities of daily living. Here, the comprehensive assessment conducted was adequate and credible. As a result of the assessment the worker determined no hands on assistance was required for any activity of daily living, thus the worker's decision to terminate the payment assistance for Home Help Services is proper under the new policy.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department has the support of policy for its termination of the Home Help Services benefits of the Appellant.

IT IS THEREFORE ORDERED that:

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

Jennifer Isiogu
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:



Date Mailed: 3-6-12

***** 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.