

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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(877) 833-0870; Fax: (517) 334-9505

IN THE MATTER OF:

Docket No. 2012-17538 HHS

██████████

██████████

Appellant

_____ /

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 ██████████. ██████████, the Appellant, appeared on his own behalf. ██████████ Appeals Review Officer, represented the Department. ██████████, Adult Services Worker ("ASW"), appeared as a witness for the Department.

ISSUE

Did the Department properly terminate the Appellant's Home Help Services ("HHS") payments?

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 authorized for Home Help Services.
2. The Appellant has been diagnosed with diabetes on insulin, strokes, seizures, and tuberculosis. (Exhibit 1, page 13)
3. The Appellant has been receiving HHS for assistance with housework, laundry, shopping and meal preparation. (Appeals Review Officer Testimony)
4. On ██████████, an ASW went to the Appellant's home and completed an in home assessment with the Appellant. The Appellant reported a need for assistance with some Activities of Daily Living ("ADLs"). (Exhibit 1, pages 14-16 and Appellant Testimony)

5. Based on the information available at the time of the assessment, the ASW concluded that the Appellant did not have a medical need for hands on assistance with any ADL. (Exhibit 1, page 17)
6. On ██████████ the Department sent the Appellant an Advance Action Notice which informed him that effective ██████████, his HHS case would be terminated based on the new policy which requires the need for hands on services with at least one ADL. (Exhibit 1, pages 8-11)
7. On ██████████, the Department sent the Appellant a second Advance Action Notice which informed him that effective ██████████, his HHS case would be suspended because provider logs, which are due every ██████████, had not been received from ██████████ (Exhibit 1, pages 5-7)
8. The Appellant requires hands on assistance with bathing to get in/out of the tub and with buttoning clothing. (Appellant Testimony)
9. On ██████████, the Michigan Administrative Hearing System received the Appellant's request for hearing. (Exhibit 1, page 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 120, 11-1-2011), pages 2-5 of 6 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-26, 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. The 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 HHS 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.

HHS payments may only be authorized for needs assessed at the 3 level 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.

Example: Ms. Smith is assessed at a level 4 for bathing however she refuses to receive assistance. Ms. Smith would be eligible to receive assistance with IADLs if the assessment determined a need at a level 3 or greater.

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 higher, 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 rationale **must** be provided.

An assessment of need, at a ranking of 3 or higher, 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 it's completion.**

Example: A client needs assistance with cutting up food. The specialist would only pay for the time required to cur 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 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

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 hour 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 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.

*Adult Services Manual (ASM) 120, 11-1-2011,
Pages 1-4 of 6*

The Appellant had been authorized for a total of ██████████ per month for assistance with housework, laundry, shopping and meal preparation with a total monthly care cost of ██████████. (Appeals Review Officer Testimony)

On ██████████, an ASW completed a home visit to assess the Appellant's HHS case. That individual is no longer an ASW and was not available for the ██████████ hearing proceedings. At the time of the ██████████, home visit, the Appellant was not receiving HHS for assistance with any ADLs. While the ASW's notes are not completely consistent with the Appellant's testimony, it is clear that during this home visit, the Appellant reported a need for assistance buttoning clothes and there was a discussion about assistance getting in/out of the tub and the Appellant's shower chair. (Exhibit 1, pages 14-16 and Appellant Testimony) Based on the information available at

the time of the assessment, the ASW concluded that the Appellant did not have a medical need for hands on assistance with any ADL. (Exhibit 1, page 17)

The Appellant provided credible testimony that he does require hands on assistance with some ADLs. Specifically, he needs hands on assistance with buttoning clothing and with getting in/out of the tub, even with the shower chair. (Appellant Testimony) Accordingly, the proposed termination of the Appellant's HHS case because he did not require hands on assistance with at least one ADL can not be upheld. The Appellant should be ranked as a level 3 for dressing and bathing. A new assessment would be appropriate to determine how frequently assistance is needed with these activities to add HHS hours to the Time and Task authorization for these activities.

The hearing packet indicates the prior ASW also sent a second Advance Negative Action Notice suspending the Appellant's HHS payments because the required provider logs had not been received. (Exhibit 1, pages 5-7) Adult Services Manual (ASM) 135, 11-1-2011, Page 2 of 7 states that the provider log must be signed by the client and provider and submitted on a quarterly basis. Adult Services Manual (ASM) 170, 11-1-2011, Page 1 of 2 supports a suspension of payments when provider logs were not submitted timely but it is believed the client and provider will return completed forms within a specified time period noted on a negative action notice. If the Appellant and his provider have not yet submitted the overdue provider logs, some additional time should be allowed because the termination notice was issued at the same time as the suspension notice and the proposed termination is just now being reversed by this Decision and Order.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department improperly determined that the Appellant is ineligible for HHS and terminated the Appellant's HHS case.

IT IS THEREFORE ORDERED THAT:

The Department's decision is REVERSED. The Appellant's HHS case shall be reinstated.

Colleen Lack
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

**Docket No. 2012-17538 HHS
Decision and Order**

cc:



Date Mailed: _____ 3-1-12- _____

***** 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 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.