

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

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IN THE MATTER OF:

Docket No. 2012-21816 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 ██████████. ██████████ was represented by her mother, ██████████.

██████████, 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 developmentally disabled and also diagnosed with diabetes, high cholesterol, an enlarged heart, hypertension and hearing loss.
3. The Appellant requires assistance with medication administration, shopping, housework, laundry and meal preparation in order to reside in the community.

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4. The Appellant has been receiving payment assistance for Instrumental Activities of Daily Living only, through the HHS program. Specifically, she has received payment assistance for medication assistance, housework, laundry, meal preparation and shopping.
5. The Appellant resides with her elderly mother, an adult brother and adult sister.
6. The Appellant's mother is purported to be her HHS provider.
7. The Department's worker made a home call [REDACTED] to perform a comprehensive assessment.
8. The Department's worker completed the comprehensive assessment at the home call, determining the Appellant's needs had remained the same as the most recent assessment.
9. The Department sent the Appellant an Advance Negative Action Notice [REDACTED] informing her of the termination of HHS benefits, effective [REDACTED].
10. 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.

The Department's policy was updated effective November 1, 2011, and states:

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 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 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*

In this case the evidence of record establishes the worker did conduct a comprehensive assessment at the ██████████ home call. Her testimony established the Appellant lives with her mother, adult brother and adult sister. She does not require physical assistance with Activities of Daily Living. She does require assistance with the housework, laundry, shopping, medication administration and meal preparation. She testified she was aware the Appellant had previously been a resident of a nursing home for a time but she directly observed she was physically better and able to ambulate just fine on her own. She further stated she had discussed each of the Activities of Daily Living and learned the Appellant did not require physical assistance with them.

The Appellant's brother testified at hearing. He said he had a dispute about the worker's finding that he did the housework. He said his mother does it all, not him. He said his sister needs to be told to take a bath or she won't do it. She won't groom herself without prompting and is entirely unable to manage her own medications.

This ALJ did find the testimony presented on behalf of the Appellant credible and profound, however, it does not establish eligibility for this program under the new policy. The eligibility requirements are more stringent than before. The Department policy no longer provides needed assistance for those who require it for Instrumental Activities of Daily Living only, even medication administration. This ALJ has no authority to disregard the policy or make exceptions. Evidence of the risks associated with attempting to self administer diabetes medication when you are unable to understand how to do so is no longer material under the Department's new eligibility criteria. While this ALJ has no doubt the Appellant requires complete assistance with medication assistance in order to reside in the community, this is no longer provided through the Home Help Services program because she does not require physical assistance with any of the listed Activities of Daily Living.

The new 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:



McGuire

Date Mailed: 4-18-12

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***** 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.