

**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. 2012-24642 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 ██████████, ██████████, ██████████, ██████████, represented the Appellant. ██████████ the Appellant, appeared and testified. ██████████, nephew and care provider, appeared as a witness for the Appellant. ██████████, Appeals Review Officer, represented the Department. ██████████ Adult Services Worker ("ASW"), and ██████████, Adult Services Supervisor, appeared as witnesses for the Department.

ISSUE

Did the Department properly deny the Appellant's Home Help Services ("HHS") application?

FINDINGS OF FACT

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

1. On or about ██████████, the Department received a referral, application and DHS-54A Medical Needs form for the HHS program for the Appellant. (Testimony of ██████████; Exhibit 2, page 1)
2. The Appellant has been diagnosed COPD, asthma, bronchitis, arthritis, depression, and other psychological diagnoses. (Exhibit 1, page 15; Exhibit 2)
3. On ██████████, the ASW went to the Appellant's home and completed an in-home initial assessment. The Appellant reported breathing problems, need for assistance with some parts of some of the Instrumental Activities of Daily Living (IADLs) and the need for some assistance with the Activity of Daily Living of bathing. (Exhibit 1, pages 13-14)

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4. The ASW ranked the Appellant as a level 1 for all ADLs and IADLs. (Exhibit 1, page 16)
5. On [REDACTED], the Department sent the Appellant an Adequate Action Notice which informed him that his HHS application was denied based on the policy which requires a ranking of 3 or higher. (Exhibit 1, pages 10-12)
6. The Appellant requires some hands on assistance with bathing, dressing, transferring, housework, shopping, laundry and meal preparation. (Appellant Testimony)
7. On [REDACTED], the Appellant's Request for Hearing was received with a copy of his SSI determination. (Exhibit 1, pages 4-9)

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 363, 9-1-08), pages 2-5 of 24 addresses the issues of assessment and service plan development:

COMPREHENSIVE ASSESSMENT

The Adult Services Comprehensive Assessment (FIA-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 client in his/her place of residence.

- An interview must be conducted with the caregiver, if applicable.
- Observe a copy of the client'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 redetermination.
- 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 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 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 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:

- 5 hours/month for shopping
- 6 hours/month for light housework
- 7 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.

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 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 same time period).

Services not Covered by Home Help Services

Do **not** authorize HHS payment for the following:

- Supervising, monitoring, reminding, guiding 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;
- Services provided free of charge;
- Services provided by another resource at the same time;
- Transportation - See Program Administrative Manual (PAM) 825 for medical transportation policy and procedures.
- Money management, e.g., power of attorney, representative payee;
- Medical services;
- Home delivered meals;
- Adult day care.

*Adult Services Manual (ASM) 363, 9-1-2008,
Pages 2-15 of 24*

The Department of Human Services issued Interim Policy Bulletin ASB 2011-001 with an effective date of October 1, 2011. This Interim Policy limits HHS eligibility for Medicaid beneficiaries with a medical need for assistance with one or more ADL at a ranking of 3 or higher. Interim Policy Bulletin ASB 2011-001 provides 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.

Each month, beginning with October, 2011, clients with reviews due who only receive IADL services must take priority.

Negative Action Notice

The adult services specialist must provide a DHS-1212, Advance Negative Action notice, if the assessment determines the client is no longer eligible to receive home help services. The effective date of the negative action is ten business days after the date the notice is mailed to the client.

The reason for termination of services should state the following:

New policy, effective October 1, 2011, by the Department of Community Health/Department of Human Services requires the need for hands-on services of at least one activity of daily living (ADL). The most recent assessment conducted at your last review did not identify a need for an ADL. Therefore, you are no longer eligible for home help services.

Right to Appeal

Clients have the right to request a hearing if they disagree with the assessment. If the client requests a hearing within ten business days, do not proceed with the negative action until after the result of the hearing.

Explain to the client that if the department is upheld, recoupment must take place back to the negative action date if payments continue. Provide the client with an option of continuing payment or suspending payment until after the hearing decision is rendered.

If the client requests a hearing after the 10-day notice and case closure has occurred, do not reopen the case pending the hearing decision. If the department's action is reversed, the case will need to be reopened and payment re-established back to the effective date of the negative action. If the department's action is upheld, no further action is required.

Reason: Implementation of new policy pursuant to requirements under Public Act 63 of 2011.

Online Manual Pages

Online manual pages will be updated with the November 2011 policy release.

INTERIM POLICY BULLETIN INDEPENDENT LIVING
SERVICES (ILS) ELIGIBILITY CRITERIA
ASB 2011-001 10-1-2011

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 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*

In the present case, the Department received a referral, application and DHS-54A Medical Needs form for the HHS program for the Appellant on or about ██████████. (Testimony of ██████████; Exhibit 2, page 1) It appears that the Appellant intended to have his nephew provide care for him through an agency. It is clear that the Department was unable to process the Appellant's HHS application within the 45 standard of promptness noted in Adult Services Manual (ASM) 363, 9-1-2008 page 1 of 24 and the updated Adult Services Manual (ASM) 110, 11-1-2011 page 1 of 2)

On ██████████, the ASW went to the Appellant's home and completed an in-home initial assessment. The Appellant reported breathing problems, need for assistance with some parts of some of the Instrumental Activities of Daily Living (IADLs) and the need for some assistance with the Activity of Daily Living of bathing to avoid slipping. (Exhibit 1, pages 13-14) The ASW ranked the Appellant as independent for all ADLs and IADLs, and denied his HHS application because she did not determine a need for assistance ranked at a level 3 or greater for any activity. However, regarding the discussion of bathing during the home visit, the ASW was unable to recall some specifics, such as whether the Appellant is able to shower independently and only needed assistance with getting in and out of the tub if he was taking a bath. (Testimony of ██████████)

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The Appellant disagrees with the denial and provided a copy of the [REDACTED] SSI determination that he has been disabled since [REDACTED]. (Exhibit 1, pages 5-9) However, the HHS program utilizes its own eligibility criteria, as cited above. The SSI determination addresses the Appellant's functional abilities to work, but does not address his abilities to perform ADLs or IADLs.

The Appellant and his witness provided credible testimony describing the Appellant's need for hands on assistance with many activities due to his impairments. The testimony further established that the Appellant's nephew is his caregiver and has been providing hands on assistance with many activities, some of which are not included in the HHS program. The Appellant has severe shortness of breath and limitations in bending. The Appellant and his nephew provided credible testimony that the Appellant lives in an older home with a very low bathtub with no overhead shower. Accordingly, he must get down in the low tub to bathe, body wash is added to the water; the Appellant requires assistance getting in/out of the tub and with washing some areas of his body that he cannot reach. (Testimony of [REDACTED] The Appellant is also unable to bend over to put on socks/shoes, stays on one floor of the multi-floor home, cannot get down stairs to the laundry facilities or utilize the old style washer independently, must take many breaks to catch his breath if he attempts any activity, needs assistance getting in/out of chairs because the older style chairs in the home are low, and with many aspects of shopping. (Testimony of [REDACTED] Regarding grooming, the Appellant also testified that a friend keeps his hair in braids for him. [REDACTED]) The Appellant and his nephew acknowledged that the Appellant can prepare some simple foods, such as sandwiches. (Testimony [REDACTED] [REDACTED])

Three DHS-54A Medical needs forms were obtained from the same physician for the Appellant's application, signed [REDACTED], [REDACTED], and [REDACTED]. It appears that the physician did not clearly indicate whether or not she was a Medicaid enrolled provider on the first two forms as it appears both the yes and no boxes are marked to this question. (Exhibit 2, pages 1 and 2) The physician was also not consistent with circling specific personal care activities in section I. (Exhibit 2, pages 1-3) However, it is clear that this physician consistently certified the Appellant had a medical need for assistance on all three forms. (Exhibit 2, pages 1-3)

Prior to [REDACTED], the Appellant would have been eligible for HHS even if all he needed was assistance with IADLs at a functional ranking of level 3 or greater. After [REDACTED], an individual must be ranked as a functional level 3 or greater with at least one ADL to be eligible for HHS. There was sufficient credible evidence presented establishing that the Appellant has needed and received hands on assistance with both ADLs and IADLs since his [REDACTED] application. The evidence does not support the ASW's determinations to rank the Appellant as independent for all activities and deny the HHS application. The credible testimony of the Appellant and his witnesses established that the Appellant has been receiving some hands on assistance from his nephew with parts of bathing, dressing, transferring, housework, shopping, laundry, and

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meal preparation. Assistance with grooming, specifically keeping the Appellant's hair in braids, has been provided by a friend. The Appellant should have been ranked as a level 3 for each of these activities. Accordingly, the denial of his HHS application cannot be upheld.

However, HHS payments can only be issued if a qualified HHS provider has been enrolled. Adult Services Manual (ASM) 140, 11-1-2011 page 1 of 3) If the HHS provider enrollment process can be completed, HHS payments should be issued retroactively to [REDACTED] for the activities included in the HHS program the Appellant's nephew he has been assisting the Appellant with: bathing, dressing, transferring, housework, shopping, laundry and meal preparation.

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 denied the Appellant's HHS application based on the available information.

IT IS THEREFORE ORDERED THAT:

The Department's decision is REVERSED. The Appellant's rankings for bathing, dressing, grooming, transferring, housework, shopping, laundry, and meal preparation shall be adjusted to a level 3. The Appellant's HHS application shall be approved retroactive to [REDACTED]. HHS hours should be authorized for bathing, dressing, transferring, housework, shopping, laundry and meal preparation as appropriate for a functional ranking of 3 for this activity and the household composition. If the HHS provider enrollment process can be completed, HHS payments should be issued retroactively to [REDACTED]

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

cc:

[REDACTED]

Date Mailed: 4-11-12

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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.