

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

P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 334-9505

IN THE MATTER OF:

██████████

Appellant

_____ /

Docket No. 2012-24681 HHS

██████████

██████████

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 ██████████. ██████████, the Appellant's brother and provider, represented him. The Appellant was present.

██████████, Appeals and Review Officer, represented the Department. ██████████, Adult Services Worker (ASW), appeared as witnesses for the Department. ██████████, Adult Services Supervisor, was present on behalf of the Department.

ISSUE

Did the Department properly determine 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 applied for Adult Home Help Services.
2. The Appellant has submitted a DHS 54A Medical Needs form to the Department, in conjunction with his HHS application.
3. The above referenced 54A indicates he has been diagnosed with multiple medical impairments including a seizure disorder, high blood pressure and severe arthritis.

██████████
Docket No. 2012-24681 HHS
Decision and Order

4. Department records indicate the Appellant has also been diagnosed with CHI, an abbreviation for closed head injury, gout, left sided numbness and is an insulin dependant diabetic.
5. The Appellant reports having suffered multiple gunshots wounds. Specifically, into his head, leg and hand, resulting in physical limitations.
6. The Appellant resides with his ████████ brothers.
7. The Appellant is ambulatory with the aid of a walker. He requires assistance to have doors opened for him. (uncontested testimony of the Appellant)
8. The Appellant is largely able to dress himself but does require assistance with buttoning his shirts and putting shoes on and tying them. (uncontested testimony at hearing)
9. The Appellant needs assistance to cut his food but can otherwise feed himself. (uncontested testimony)
10. The Appellant can brush his own hair. (uncontested testimony)
11. The ASW did not recall whether the Appellant used a walker for ambulation or not. (testimony at hearing)
12. The ASW did not ask the Appellant what help he requires with bathing. She did determine he does not require assistance with bathing.
13. The ASW is unfamiliar with one of the Appellant's medical conditions, CHI, nor did she ask the Appellant, his doctor or his provider. (testimony at hearing)
14. The ASW determined the Appellant is independent with all Activities of Daily Living at the assessment she completed in ██████████
15. On ██████████, the Department sent the Appellant an Approval Notice indicating he had been authorized to receive ██████████ per month in HHS assistance payments for a provider.
16. On ██████████, the Michigan Administrative Hearing System received the Appellant's request for hearing.

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 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 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, 11-1-2011,
Pages 1-4 of 6*

The ASW completed a home call ██████████ and conducted an assessment. As a result of her assessment, she determined the Appellant required some assistance with Instrumental Activities of Daily Living, specifically housework, laundry, shopping for food and medication and meal preparation. She thereafter authorized a monthly payment of ██████████ for a provider to assist him. The worker's narrative notes were introduced into the evidentiary record and reviewed by this ALJ. In them she states "the client claims to need help with bathing". She does not specify what assistance. At hearing, when asked, she said she determined he did not need assistance with bathing and testified she had not asked him what type assistance he required with bathing. She said he was independent with all Activities of Daily Living, as indicated in the functional assessment on page 13 of the evidence submitted by the Department. She wrote in her narrative that among the diagnosis on the medical report she had, the Appellant has CHI. When asked at hearing, she stated she did not know what this stood for, nor had she inquired about it.

At hearing the Appellant provided testimony that he can dress himself but needs help putting shoes on, tying them and buttoning his shirt. He stated he can brush his own hair. He stated he walks with a walker and needs help opening doors. He stated the majority of the time he gets up out of a chair without assistance. He further stated he can feed himself but needs help cutting his food. He testified he had a seizure while in the bathtub which caused him to lose all his front teeth and he does not bathe by himself any longer. He reported 2 seizures per day, consistent with what he told the worker at the home call.

There was credible evidence presented establishing that the Appellant needed hands on assistance with at least one ADL at the time of the ██████████ assessment. The worker failed to ascertain this at the assessment because she did not perform a complete comprehensive assessment. The testimony provided by the ASW establishes she did not make sufficiently specific inquiries about to determine what assistance he needs. For example, she did not ask him what type of assistance he requires with bathing, despite his assertion that he required assistance bathing. At hearing, she had no recollection of whether he was dependent upon a walker for ambulation. There is no evidence she observed his ability to walk or made notes about it. She noted he has a medical diagnosis but has no idea what it is and did not inquire about it. This ALJ cannot find her assessment is adequate to support her determinations about the Appellant's needs.

By contrast, the Appellant and his provider provided more specific and persuasive evidence about the Appellant's physical needs. They are each found credible. The testimony pertaining to the physical needs and limitations is further supported by the many medical challenges documented in the case records.

After consideration of the evidence of record, this ALJ finds the credible evidence supports a functional rank of 3 for bathing assistance, 3 for dressing, 3 for medication assistance and 3 for brief assistance with eating due the need to cut some of his food. The functional ranks for the IADLs appear consistent with the Appellant's physical limitations and medical status at this time.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department has improperly determined the Appellant's HHS assistance because the Appellant does require hands on assistance with at least one ADL.

IT IS THEREFORE ORDERED that:

The Department's decision is REVERSED. The Department is ordered to adjust the functional ranks and payment authorization consistent with this decision.

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

cc:



Date Mailed: 4-18-12

***** 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.