

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

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IN THE MATTER OF:

Docket No. 2012-25133 HHS  
No. [REDACTED]

[REDACTED] Case

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 [REDACTED], [REDACTED], [REDACTED] represented the Appellant. [REDACTED] the Appellant, appeared and testified.

[REDACTED] appeared as witnesses for the Department.

**ISSUE**

Did the Department properly reduce the Appellant's Home Help Services ("HHS") authorization?

**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 HHS.
2. The Appellant has been diagnosed with stroke, left hemiparesis, and hypertension. (Exhibit 1, pages 7 and 14, Exhibit 2, page 1)
3. The Appellant had been receiving HHS for assistance with bathing, grooming, dressing, mobility, household work, shopping, laundry, and meal preparation. (Exhibit 1, pages 9 and 11, Exhibit 2, page 3, ASW Testimony)

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4. The Appellant's [REDACTED] has been enrolled as his HHS provider since [REDACTED] (Exhibit 1, page 12)
5. On [REDACTED] the AS W documented a telephone call from the Appellant's HHS provider, who reported that he does not bathe the Appellant. (Exhibit 1, page 9)
6. On [REDACTED] the Department sent the Appellant an Advance Negative Action Notice which informed him that that effective [REDACTED] his HHS case would be reduced to \$298.13 per month because bathing was no longer authorized based on the information from the provider. (Exhibit 2, page 2)
7. On [REDACTED] the Department sent the Appellant an Advance Negative Action Notice which informed him that that effective [REDACTED] his [REDACTED] case would be reduced to \$189.20 per month because the provider called and stated he only assists with household chores and does not bathe, groom or dress. (Exhibit 1, page 5)
8. On [REDACTED] the Appellant's Request for Hearing was received by the [REDACTED] (Exhibit 1, pages 4-6)

**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 1-5 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.

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### **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.

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### **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.

### Responsible Relatives

Activities of daily living may be approved when the responsible relative is **unavailable** or **unable** to provide these services.

**Note: Unavailable** means a absence from the home for an extended period due to employment, school or other legitimate reasons. The responsible relative must provide a work or school schedule to verify they are unavailable to provide care. **Unable** means the responsible person has disabilities of their own which prevent them from providing care. These disabilities must be documented/verified by a medical professional on the DHS-54A, Medical Needs form.

Do **not** approve shopping, laundry, or light housecleaning, when a responsible relative of the client resides in the home, **unless** they are unavailable or unable to provide these services. Document findings in the general narrative in ASCAP.

**Example:** Mrs. Smith is in need of home help services. Her spouse is employed and is out of the home Monday thru Friday from 7a.m. to 7p.m. The specialist would not approve hours for shopping, laundry or house cleaning as Mr. Smith is responsible for these tasks.

**Example:** Mrs. Jones is in need of home help services. Her spouse's employment takes him out of town Monday thru Saturday. The specialist may approve hours for shopping, laundry or house cleaning.

### Legal Dependent

Do **not** approve shopping, laundry, or light housecleaning, when a legal dependent of the client (minors 15-17) resides in the home, **unless** they are unavailable or unable to provide these services.

*Adult Services Manual (ASM) 120, 11-1-2011,  
Pages 1-5 of 6*

Adult Services Manual (ASM 150, 11-1-2011), pages 1-4 address notification of eligibility determinations:

### **INTRODUCTION**

Individuals who submit an application (DHS-390) for home help services or adult community placement must be given

written notification of approval or denial for services. A written notice must be sent within the 45 day standard of promptness.

Clients with active service cases must be provided written notice of any change in their services (increase, reduction, suspension or termination).

### **Written Notification of Disposition**

All notifications are documented under ASCAP contacts when they are generated. This documentation acts as the file copy for the case record. For this purpose, the form letters used are:

- DHS-1210, Services Approval Notice.
- DHS-1212A, Adequate Negative Action Notice.
- DHS-1212, Advance Negative Action Notice.

Each notification letter includes an explanation of the procedures for requesting an administrative hearing.

The adult services specialist **must sign** the bottom of the second page of all notices (DHS-1210, DHS-1212A, DHS-1212) before they are mailed to the client.

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### **Advance Negative Action Notice (DHS-1212)**

The DHS-1212, Advance Negative Action Notice, is used and generated on ASCAP when there is a reduction, suspension or termination of services. Appropriate notations must be entered in the comment section to explain the reason for the negative action.

- Reduced - decrease in payment.
- Suspended - payments stopped but case remains open.
- Terminated - case closure.

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### Negative Actions Requiring Ten Day Notice

The effective date of the negative action is ten business days **after** the date the notice is mailed to the client. The effective date must be entered on the negative action notice.

If the client does not request an administrative hearing before the effective date, the adult services specialist must proceed with the proposed action.

If the client requests an administrative hearing before the effective date of the negative action, and the specialist is made aware of the hearing request, continue payments until a hearing decision has been made. If the specialist is made aware of the hearing request **after** payments have ended, payments must be reinstated pending the outcome of the hearing. Offer the client the option of discontinuing payment pending the hearing decision.

**Note:** When payments are continued pending the outcome of a hearing, the client must repay any overpayments if the department's negative action is upheld. Initiate recoupment procedures by sending the client a Recoupment Letter.

### Negative Actions Not Requiring Ten Day Notice

The following situations **do not** require the ten business day notice on negative actions:

- The department has factual confirmation of the death of the client (negative action notice must be mailed to the guardian or individual acting on the client's behalf) or death of the service provider.

**Note:** Cases should remain open until all appropriate payments have been issued.

- The department receives a verbal or written statement from the client, stating they no longer want or require services, or that they want services reduced.

**Note:** This information must be clearly documented in the general narrative of ASCAP. Written notices must be maintained in the paper case file and documented in the general narrative.

- The department receives a verbal or written statement from the client that contains information requiring a negative action. The statement must acknowledge the client is aware the negative action is required **and** they understand the action will occur.

**Example:** A home help services client informs the specialist that they are engaged and will be married on a specific date. They also acknowledge that their new spouse will be responsible for meeting their personal care needs and they will no longer qualify for home help services.

**Note:** This information must be clearly documented in the general narrative of ASCAP. Written notices must be maintained in the paper case file and documented in the general narrative.

- The client has been admitted to an institution or setting (for example, hospital, nursing home) where the client no longer qualifies for federal financial participation under the Medicaid State Plan for personal care services in the community.

**Note:** When a client is admitted to a hospital or nursing home, the facility is reimbursed for the client's care on the day the client is admitted, but not for the day of discharge. The home help provider cannot be reimbursed for the date the client is admitted to the facility but may be paid for the day of discharge.

- The client cannot be located and the department mail directed to the client's last known address has been returned by the post office indicating the forwarding address is unknown.

**Note:** In this circumstance, a services payment must be made available if the client is located during the payment period covered by the returned warrant.

- The client has been accepted for services in a new jurisdiction and that fact has been established by the jurisdiction previously providing services.
- The time frame for a services payment, granted for a specific time period, has elapsed. The client was informed, in writing, that the time payments were

initiated, that services would automatically terminate at the end of the specified period.

**Example:** The DHS- 1210 clearly states a begin and end date for the services payments.

*Adult Services Manual (ASM) 150, 11-1-2011,  
Pages 1-4*

In the present case, the ASW reduced the Appellant's services twice, based on telephone calls from his HHS provider, ██████████ reporting services he does not provide for the Appellant. The ██████████ notice eliminating the HHS hours for bathing appears to be based on a phone note documenting a call from the HHS provider/ ██████████ reporting he does not bathe the Appellant. (Exhibit 1, page 9 and Exhibit 2, page 2) The ASW testified that the ██████████ notice eliminating HHS hours for bathing, dressing, and grooming was also based on a telephone call from the provider reporting he only assists with household chores. (Exhibit 1, page 5 and ASW Testimony) However, the ██████████ phone note does not indicate grooming, dressing or mobility were discussed and there was no additional phone call from the Appellant's HHS provider/ ██████████ documented in the contact history or general narrative until ██████████ (Exhibit 1, pages 8-9)

The ASW reduced the Appellant's functional rankings for bathing, grooming, dressing and mobility to a level 2. (Exhibit 1, page 13) The ASW explained that the Appellant has some limited movements from the stroke, but is still independent with these activities. (ASW Testimony) The rankings assigned by the ASW appear to be in error. Under the policy, rankings at functional level 2 indicate a need for verbal assistance. The ASW's testimony did not indicate she determined the Appellant needed verbal assistance.

The ASW testified she made the reductions based on information from the HHS provider during telephone calls, without speaking with the Appellant. However, the ASW acknowledged that the Appellant has reported needing assistance with ADLs during assessments. (ASW Testimony) A DHS-54A Medical Needs form was not obtained from the Appellant's physician until ██████████ (Exhibit 1, page 7)

The Appellant disagrees with the reductions. The Appellant's HHS provider, ██████████ testified that a prior provider called stating she was still working for the Appellant when she was not. The Appellant's HHS provider/ ██████████ stated he worked for all of ██████████ but did not get paid. The Appellant's HHS provider, ██████████ testified that he did not call the ASW and report he does not bathe, groom, or dress the Appellant. (██████████ Testimony) The Appellant testified that the ASW took the prior HHS provider's word and did not try to find out what was needed. The Appellant asserted that when he tried to tell the ASW he needed assistance with these ADLs, she ignored him. The Appellant explained that sometimes he has stiffness on his left side and needs assistance with activities like grooming and bathing. (Appellant Testimony)

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The Department did not properly reduce the Appellant's HHS authorization. Both the [REDACTED] and [REDACTED] Advance Negative Action Notice failed to provide the required advance notice of the reductions. The [REDACTED] Advance Negative Action Notice indicated an effective date of [REDACTED] (Exhibit 2, page 2) The [REDACTED] Advance Negative Action Notice indicated an effective date of [REDACTED] (Exhibit 1, page 5) None of the exceptions to the policy requiring 10 business day advance notice of a negative action were present in this case. Information allegedly was reported by the HHS provider. There is no evidence of any statement from the Appellant that he wanted services reduced or that the Appellant provided information that required a reduction and understood the reduction would occur.

Additionally, the Department has not provided sufficient evidence to support the determinations to reduce the Appellant's HHS authorization in [REDACTED]. The ASW only documented one phone call from the Appellant's HHS provider about bathing. There was no documentation that the provider discussed grooming, dressing or mobility, nor of a second phone call reporting the HHS provider only assists with household chores to support the elimination of grooming, dressing, and mobility. The Appellant's HHS [REDACTED] testified he never made any calls to the Department reporting he did not assist the Appellant with bathing or other ADLs. The ASW did not make any attempt to contact the Appellant to clarify his needs prior to making the reductions. While the Department submitted a DHS-54A Medical Needs form from the Appellant's doctor with only household chores marked, this was not obtained until well after the [REDACTED] Advance Negative Action Notices were issued. The reductions to the Appellant's HHS case proposed on the [REDACTED] Advance Negative Action Notices cannot be upheld.

**DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department improperly reduced the Appellant HHS authorization.

**IT IS THEREFORE ORDERED THAT:**

The Department's decision is REVERSED. The previously authorized HHS hours for bathing, grooming, dressing, and mobility shall be added to the Appellant's HHS authorization retroactive to November 1, 2011.

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

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cc:



Date Mailed: \_\_\_\_\_

**\*\*\* 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 must appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order, if a timely request for rehearing was made, within 30 days of the receipt of the rehearing decision.