

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

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IN THE MATTER OF:

██████████,

Appellant

Docket No. 2012-27845 HHS

██████████

██████████

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 her own behalf. ██████████ 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 terminate the Appellant's Home Help Services ("HHS") case?

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 arthritis and gunshot wound to head. (Exhibit 1, page 15)
3. The Appellant has been receiving HHS for assistance with the Instrumental Activities ██████████ ("IADLs"), of housework, shopping, laundry, and meal preparation. (Exhibit 1, page 17)
4. On ██████████, the ASW went to the Appellant's home and completed an in-home assessment for a review of her HHS case. The Appellant and her provider reported a need for assistance with the Activity of Daily Living ("ADL") of bathing, specifically getting in/out of the tub and with washing her thighs and back. The ASW observed the Appellant

transferring from sitting to standing positions, walking, and moving her hands/arms while sitting. (ASW Testimony and Exhibit 1, pages 11-12)

5. Based on the available information, the ASW concluded that the Appellant did not have a medical need for hands on assistance with any ADL. (ASW Testimony, Exhibit 1, pages 11-12 and 16)
6. On ██████████, the Department sent the Appellant an Advance Action Notice which informed her that effective ██████████, her 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 7-10)
7. On ██████████, the Appellant's request for hearing was received by the Michigan Administrative Hearing System. (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 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 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*

Adult Services Manual (ASM 115, 11-1-2011), pages 1 of 3 also addresses the program requirements, including medical certification:

MEDICAL NEEDS FORM (DHS-54A)

The DHS-54A, Medical Needs form must be signed and dated by a medical professional certifying a medical need for personal care services. The medical professional must be an enrolled Medicaid provider and hold one of the following professional licenses:

- Physician (M.D. or D.O.).
- Nurse practitioner.
- Occupational therapist
- Physical therapist.

Note: A physician assistant (PA) is not an enrolled Medicaid provider and **cannot** sign the DHS-54A.

The medical needs form is only required at the initial opening for SSI recipients and disabled adult children (DAC). All other Medicaid recipients must have a DHS-54A completed at the initial opening and annually thereafter.

The client is responsible for obtaining the medical certification of need but the form must be completed by the medical professional and not the the client. The National Provider Identifier (NPI) number must be entered on the form

by the medical provider and the medical professional must indicate whether they are a Medicaid enrolled provider.

The medical professional certifies that the client's need for service is related to an existing medical condition. **The medical professional does not prescribe or authorize personal care services.** Needed services are determined by the comprehensive assessment conducted by the adult services specialist.

*Adult Services Manual (ASM) 115, 11-1-2011,
Pages 1 of 3 (emphasis in original)*

The Appellant had been authorized for a total of █████ hours and █████ minutes per month for assistance with housework, shopping, laundry, and meal preparation. (Exhibit 1, page 17)

On █████, the ASW went to the Appellant's home and completed an in-home assessment for a review of the Appellant's HHS case. The Appellant and her provider reported a need for assistance with the ADL of bathing, specifically getting in/out of the tub and with washing her thighs and back. The ASW understood that the Appellant did not want her HHS provider to assist with bathing because he is a male. The ASW observed the Appellant transferring from a sitting to a standing position, walking, and moving her hands/arms while sitting. The ASW noted that the Appellant reported being able to wash her own face, private areas, arms, legs, and feet without assistance. (ASW Testimony and Exhibit 1, pages 11-12) Based on the available information, including her observations of the Appellant during the home visit, the ASW concluded that the Appellant did not have a medical need for hands on assistance with any ADL, including bathing. (ASW Testimony, Exhibit 1, pages 12-12 and 16) Accordingly, on █████, the ASW sent the Appellant the Advance Action Notice which informed her that effective █████, her 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 7-10)

The Appellant disagrees with the termination. The Appellant testified that she does not believe there was a clear understanding at the home visit because she was upset by the time they discussed bathing. The Appellant stated that her provider has been helping her get in/out of the tub. Her testimony indicated she particularly needs help getting up from taking a bath because it is a deep tub, and she has a towel on when her provider helps her. The Appellant takes baths and showers, but prefers a bath, particularly when she aches. The Appellant stated that she can wash herself, but at the time of the home visit may have been having a bit of a problem due to pain. The Appellant also testified that she sometimes needs assistance getting off the toilet in the mornings if she has been sitting too long for a bowel movement. The Appellant was upset during the home visit and was not sure if she told the ASW about this need. Lastly, the Appellant indicated she needs assistance with medications to make sure she takes the proper

Docket No. 2012-27845 HHS
Decision and Order

dosages as scheduled. Otherwise she may forget or overdose. The Appellant's HHS provider is at her home [REDACTED] days a week. (Appellant Testimony)

While this ALJ understands that the Appellant was upset at the home visit and miscommunications may have occurred, there was insufficient evidence presented to establish that based on the information available at the time of the [REDACTED] assessment, the Appellant needed hands on assistance with at least one ADL. The Appellant indicated that she prefers a bath and the need for assistance with bathing was primarily to get up from taking a bath in the deep tub. However, her testimony indicated that she is able to take showers and is able to wash her body. Assistance with medications is considered an IADL in the Adult Services Manual Policy, and reminders, prompting or supervision would only be a functional ranking of level 2. It does not appear that any need for assistance with toileting was reported to the ASW at the home visit and the Appellant is able to toilet independently on mornings when her HHS provider is not there. Accordingly, the ASW properly applied Adult Services Manual policy and took action to terminate the Appellant's HHS case because the Appellant did not require hands on assistance with at least one ADL based on the information available at that time.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

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

cc:

[REDACTED]

Date Mailed: 3-24-12

Docket No. 2012-27845 HHS
Decision and Order

***** 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.