

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

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IN THE MATTER OF:

██████████,

Appellant

Docket No. 2012-29911 HHS
Case No. ██████████

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 ██████████. ██████████, mother, represented the Appellant. ██████████, provider, and ██████████, Disability Network, appeared as witnesses 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 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 HHS.
2. The Department received medical certification on ██████████ that the Appellant was diagnosed with schizophrenic disorder and mild mental retardation. The Department also noted prostate cancer and incontinence as customer reported. ██████████
3. The Appellant has been authorized for HHS for assistance with the Activity of Daily Living ("ADL") of bathing and the Instrumental Activities of Daily Living ("IADLs") of medication, housework, laundry, and shopping and meal preparation. ██████████

4. The policy regarding HHS eligibility changed effective [REDACTED], adding a new requirement of a need for hands on assistance, functional ranking of 3 or greater, with at least one ADL. Interim Policy Bulletin Independent Living Services (ILS) eligibility criteria ASB 2011-001 10-1-2011.
5. On [REDACTED], the ASW completed a home visit for a review of the Appellant's HHS case. The Appellant's sister was also present. The ASW understood that the Appellant does not have a physical handicap that prevents bathing. It also was noted that his provider washes his back for him, he gets tired and weak from radiation treatments, and he has difficulty with understanding, comprehending, and following instructions.
[REDACTED]
6. On [REDACTED], the ASW met with the Appellant's HHS provider at the Department of Human Services office. The ASW understood that the Appellant does not have physical problems preventing him from doing things, but because he asks and likes to be helped, the provider assists with getting in/out the tub and washing his back. [REDACTED]
7. Based on the available information, the ASW concluded that the Appellant did not have a physical handicap and HHS hours for bathing should be removed. [REDACTED]
8. [REDACTED], the Department sent the Appellant an Advance Action Notice which informed him that effective [REDACTED] his HHS case would be terminated based on the new policy which requires the need for hands on services with at least one ADL. [REDACTED]
9. On [REDACTED], the Appellant's request for hearing was received by the Michigan Administrative Hearing System. [REDACTED]
10. The Appellant requires and has been receiving some hands on assistance with the ADL of bathing.

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.

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
(emphasis in original)*

The Appellant had been authorized for 49 hours and 10 minutes of HHS for assistance with bathing, medication, housework, laundry, and shopping and meal preparation with a total monthly care cost of \$393.31. (Exhibit 1, page 14) The Appellant has been

ranked as functional level 1 for grooming, dressing, toileting, transferring, continence, eating, respiration and mobility; a level 3 for bathing and medication; and a level 5 for housework, shopping, laundry, and meal preparation. ██████████ The ASW testified it was an oversight that the functional ranking for bathing had not been reduced after her assessment. (ASW Testimony)

On ██████████, the ASW completed a home visit for a review of the Appellant's HHS case. The Appellant's ██████████ was also present. The ASW understood that the Appellant does not have a physical handicap that prevents bathing, though it was noted that his provider washes his back for him and that he gets tired and weak from radiation treatments. Difficulty with understanding, comprehending, and following instructions was also noted. ██████████ On ██████████ the ASW met with the Appellant's HHS provider at the Department of Human Services office. The ASW understood that the Appellant does not have physical problems preventing him from doing things, but because he asks and likes to be helped, the provider assists with getting in/out the tub and washing his back. ██████████

The ASW confirmed that no updated medical certification was requested for the ██████████ assessment because the Appellant receives SSI and the Department policy does not require annual medical certification for SSI recipients. (See Adult Services Manual (ASM) 115, 11-1-2011, page 1 of 3) The ASW determined the HHS hours for bathing should be removed based on her understanding that the Appellant did not have a physical handicap that prevents bathing independently. Because there was no determination of a need for hands on assistance, functional ranking 3 or greater, with any ADL, the ASW took action to terminate the Appellant's HHS authorization under the new policy. ██████████

The Appellant disagrees with the termination. The Appellant's ██████████ testified that at the ██████████ home visit, she told the ASW the Appellant needed assistance like he had been getting. The Appellant's ██████████ stated that the Appellant receives assistance with bathing from beginning to end. (██████████ Testimony) The Appellant's HHS provider testified that she told the ASW the Appellant does not like to be helped, not that he likes to be helped. The provider explained that due to the Appellant's mental health issues, he does not like to be helped, and she continues to work with him about bathing through the day. By the end of each day she makes sure he is bathed before she leaves, usually a shower but at least a sponge bath. The assistance she described providing included more than verbal prompting, reminding, guiding and supervising the Appellant in the bathroom. The provider credibly testified she also provides hands on assistance getting in/out of the tub and washing the Appellant's body. She stated that the Appellant also needs hands on assistance with bathing because he has severe joint and muscle pain. (Provider Testimony)

The evidence does not support a termination of the Appellant's HHS case. The policy does not specify that there must be a physical impairment resulting in the need for hands on assistance. Rather, policy states:

Home help services are provided to enable individuals with functional limitation(s), resulting from a medical or physical disability or cognitive impairment to live independently and receive care in the least restrictive, preferred settings.

Adult Services Manual (ASM) 101, 11-1-2011,
Page 1 of 4.

In this case, the Department has never had medical certification of a physical impairment. The Appellant's HHS authorization has been based on a [REDACTED] physician certification documenting only schizophrenia and mild mental retardation. The prostate cancer and incontinence are noted to be customer reported. [REDACTED]

Further, it does not appear that the assessment resulted in an accurate communication of the Appellant's abilities and needs. It is clear that the ASW tried to obtain accurate information about the Appellant by involving both the Appellant and the HHS provider in the assessment. However, the ASW's understanding regarding bathing from this assessment was significantly different than the testimony of the Appellant's [REDACTED] and HHS provider. The testimony of the Appellant's [REDACTED] and HHS provider about bathing was consistent with the past ASW's functional rankings and justification note. [REDACTED]

[REDACTED] The home visit narrative note shows the Appellant's [REDACTED] reported the Appellant's personal care needs remained the same. [REDACTED] Accordingly, it is less likely that the testimony of the Appellant's [REDACTED] and HHS provider about bathing was elaborated just for this hearing to prevent the termination based on new policy. The need for hands on assistance with bathing, including selecting an appropriate water temperature, help in/out the tub and the provider needing to wash the Appellant's body after allowing the Appellant to try to do it himself, would also be also consistent with the ASW's home visit narrative notes that the Appellant has trouble understanding, comprehending, and following instructions. (Provider Testimony and [REDACTED]) Similarly, this is consistent with the note that it is not safe for the Appellant to use appliances and functional rankings at level 5 for housework, shopping, laundry, and meal preparation. [REDACTED]

There was sufficient credible evidence presented establishing that the Appellant needs and has been receiving hands on assistance, functional ranking 3 or greater, with the ADL of bathing. Accordingly, the Appellant's HHS case should not be terminated and should continue at the previously authorized functional rankings and time and task allocations.

While this ALJ understands that HHS policy does not require updated medical verification each year for SSI recipients, it would be appropriate to request a current DHS-54A Medical Needs form be completed by the Appellant's doctor at the next assessment in light of the testimony that the Appellant has some physical impairments.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department did not properly determine that the Appellant is ineligible for HHS and terminated his HHS case based on the available information.

IT IS THEREFORE ORDERED THAT:

The Department's decision is REVERSED. The Department is ordered to reinstate the Appellant's HHS authorization at the previously authorized functional rankings and time and task allocations retroactive to the [REDACTED], effective date.

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

cc:

[REDACTED]

Date Mailed: 6-20-2012

***** 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.