

**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:

██████████,

Appellant

Docket No. 2012-32553 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 ██████████, the Appellant, appeared and testified. ██████████ Appeals Review Officer, represented the Department. ██████████ Adult Services Worker ("ASW"), appeared as a witness 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 Department received medical certification in ██████████ that the Appellant was diagnosed with bipolar disorder, hypothyroidism, and seizures. ██████████
3. Since the initial assessment of the Appellant's HHS case, the Appellant has been authorized for HHS for assistance with the Instrumental Activities of Daily Living ("IADLs") of medication, housework, laundry, and shopping and meal preparation. ██████████
4. The policy regarding HHS eligibility changed effective ██████████ adding a new requirement of a need for hands on assistance, functional ranking of 3 or greater, with at least one Activity of Daily Living ("ADL").

Interim Policy Bulletin Independent Living Services (ILS) eligibility criteria.
ASB 2011-001 10-1-2011

5. On ██████████ the ASW completed a home visit for a yearly review of the Appellant's HHS case. The ASW asked if there had been any changes in the Appellant's care needs and none were reported. The ASW did not ask any questions about ADLs. ██████████
██████████
6. Based on the available information, the ASW concluded that the Appellant did not have a medical need for hands on assistance with any ADL.
7. 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. ██████████
██████████
8. On ██████████, the Appellant's request for hearing was received by the Michigan Administrative Hearing System. ██████████
9. The Appellant requires and has been receiving hands on assistance with at least one ADL, transferring.

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.

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 ADLs 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 Adult Services Manual (ASM) 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*

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:

██████████
Docket No. 2012-32553 HHS
Decision and Order

- 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 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 Department received medical certification in ██████████ that the Appellant was diagnosed with bipolar disorder, hypothyroidism, and seizures. ██████████ Since the initial assessment of the Appellant's HHS case, the Appellant has been authorized for HHS for assistance with the IADLs of medication, housework, laundry, and shopping and meal preparation. ██████████

On ██████████ the ASW completed a home visit for a yearly review of the Appellant's HHS case. The ASW asked if there had been any changes in the Appellant's care needs and none were reported. The ASW did not ask any questions about ADLs. ██████████ The ASW determined no changes should be made to the Appellant's functional rankings, and left them at level 1 for all ADLs and level 3 for all IADLs. ██████████ Accordingly, the ASW took action to terminate the Appellant's HHS case based on the new policy requirement of a need for hands on assistance, functional ranking of 3 or greater, with at least one ADL to be eligible for ongoing HHS. ██████████

██████████
Docket No. 2012-32553 HHS
Decision and Order

The Appellant disagrees with the termination and testified that there have been some changes in her condition since the ██████████ assessment. The Appellant indicated she went to the hospital for a cut on her arm, which requires wound care. The Appellant also reported having recent radiation therapy related to her history of thyroid cancer. Her testimony also indicated additional diagnoses, such as arthritis in her hands, diabetes, and bone spurs in her feet, that may not be recent changes, though they were not included in the ██████████ medical certification. ██████████ The Appellant indicated she would be seeing her doctor within the week about the problems and problems with her feet and hands/wrists. The Appellant discussed her needs for assistance with IADLs, like medication and meal preparation. The Appellant answered questions about each ADL. The Appellant acknowledged being independent with most ADLs, but indicated she requires and has been receiving some assistance with transferring in/out of some chairs. Specifically, rolling or swivel chairs, like the one by the computer at home. ██████████

The evidence does not indicate that a full and complete comprehensive assessment was completed of the Appellant's HHS case. The ASW appears to have mostly relied upon a prior ASW's assessment of the Appellant's case. He only asked the Appellant if there had been any changes during the ██████████ home visit. The ASW failed to discuss or otherwise assess any specific activities with the Appellant before terminating her HHS case based on not having a need for hands on services with at least one ADL. When asked about each of the ADLs, the Appellant testified she requires and has received some hands on assistance with transferring in/out of some chairs.

There was sufficient credible evidence presented establishing that the Appellant needs and has been receiving hands on assistance with at least one ADL, transferring. The Appellant's functional ranking for transferring shall be changed to a level 3 and HHS hours should be added for transferring as appropriate for a functional ranking of 3.

While this ALJ understands that HHS policy does not require a yearly medical verification for SSI recipients, it appears that no updated medical verification has been received since ██████████. It may be helpful to request updated medical verification for the next assessment of the Appellant's HHS case in light of her testimony that there are additional diagnoses and changes to her condition.

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 her HHS case based on the available information.

IT IS THEREFORE ORDERED THAT:

The Department's decision is REVERSED. The Appellant's HHS case shall be reinstated retroactive to ██████████. The Appellant's functional ranking

**Docket No. 2012-32553 HHS
Decision and Order**

for transferring shall be changed to a level 3 and HHS hours should be added for transferring as appropriate for a functional ranking of 3.

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

cc:



Date Mailed: 5-15-2012

***** 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 March 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.