

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

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IN THE MATTER OF:

Docket No. 2012-33686 HHS

██████████

██████████ ██████████

Appellant

_____ /

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 ██████████. Attorney ██████████ represented the Appellant. The Appellant's sister and legal guardian was present and testified. The record was left open until ██████████ to allow submission of additional evidence from the Appellant.

Ms ██████████, Appeals and Review Officer for the Department of Community Health, represented the Department. ██████████, Adult Services Worker was present as a Department witness. ██████████, Adult Services Supervisor, was present on behalf of the Department.

ISSUE

Did the Department properly terminate Home Help Services (HHS) payments to the Appellant?

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 receiving adult Home Help Services.
2. The Appellant is seriously mentally ill. He has a legal guardian.
3. As a result of his mental health status, the Appellant lacks insight into how his decision making can negatively affect his physical and mental health. (testimony of guardian)

4. The Appellant is subject to court-ordered injections of Haldol, to treat his mental illness. (testimony of guardian)
5. The Appellant has been receiving assistance with medication administration, housework, shopping, laundry and meal preparation through the Home Help Services program.
6. The Appellant still requires assistance with medication administration, shopping, housework, laundry and meal preparation in order to reside in the community safely.
7. On ██████████ the Department of Human Services Adult Services Worker telephoned the Appellant's legal guardian in order to schedule a home call for the purpose of completing a comprehensive assessment following a change in policy.
8. The ASW discussed the new policy changes with the Appellant's legal guardian on the telephone call made ██████████. The Appellant's legal guardian informed the ASW the Appellant is capable of performing all of his own Activities of Daily Living as defined in Department policy. She stated a home call is unnecessary.
9. The ASW thereafter prepared an Advance Negative Action Notice informing the Appellant his HHS services payment assistance would be terminated effective ██████████ due to the lack of need for "personal hands on care".
10. The Appellant appealed the determination on ██████████

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 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.

ELIGIBILITY FOR HOME HELP SERVICES

Home help services (HHS) are defined as those, which the Agency is paying for through Title XIX (Medicaid) funds. The

customer must be eligible for Medicaid in order to receive these services.

Medicaid/Medical Aid (MA)

Verify the customer's Medicaid/Medical aid status.

The customer may be eligible for MA under one of the following:

- All requirements for MA have been met, **or**
- MA spend-down obligation has been met.

Adult Services Manual (ASM) 9-1-2008

Necessity For Service

The adult services worker is responsible for determining the necessity and level of need for HHS based on:

- Customer choice.
- A complete comprehensive assessment and determination of the customer's need for personal care services.

- Verification of the customer's medical need by a Medicaid enrolled medical professional. The customer is responsible for obtaining the medical certification of need. The Medicaid provider identification number must be entered on the form by the medical provider. The Medical Needs form must be signed and dated by one of the following medical professionals:
 - Physician
 - Nurse Practitioner
 - Occupational Therapist
 - Physical Therapist

The physician is to certify that the customer's need for service is related to an existing medical condition. The physician does not prescribe or authorize personal care services.

If the Medical Needs form has not been returned, the adult services worker should follow-up with the customer and/or medical professional.

COMPREHENSIVE ASSESSMENT

The Adult Services Comprehensive Assessment (DHS-324) is the primary tool for determining need for services. The comprehensive assessment will be completed on all open cases, whether a home help payment will be made or not. ASCAP, the automated workload management system provides the format for the comprehensive assessment and all information will be entered on the computer program.

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 customer in his/her place of residence.
- An interview must be conducted with the caregiver, if applicable.
- Observe a copy of the customer's social security card.
- Observe a picture I.D. of the caregiver, if applicable.
- The assessment must be updated as often as necessary, but minimally at the six month review and annual re-determination.
- A release of information must be obtained when requesting documentation from confidential sources and/or sharing information from the department record.
- Follow specialized rules of confidentiality when ILS cases have companion APS cases.

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 customer'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
- Housework

Functional Scale ADL's and IADL's 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.

Note: HHS payments may only be authorized for needs assessed at the 3 level or greater.

Time and Task

The worker will allocate time for each task assessed a rank of 3 or higher, based on the 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.

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.

These are maximums; as always, if the client needs fewer hours, that is what must be authorized. Hours should continue to be prorated in shared living arrangements. If there is a need for expanded hours, a request should be submitted to:

Service Plan Development

Address the following factors in the development of the service plan:

- The specific services to be provided, by whom and at what cost.
- The extent to which the Client does not perform activities essential to the caring for self. The intent of the Home Help program is to assist individuals to function as independently as possible. It is important to work with the recipient and the provider in developing a plan to achieve this goal.
- The kinds and amounts of activities required for the client's maintenance and functioning in the living environment.
- The availability or ability of a responsible relative or legal dependent of the client to perform the tasks the client does not perform. Authorize HHS only for those

services or times which the responsible relative/legal dependent is unavailable or unable to provide.

Note: Unavailable means absence from the home, for employment or other legitimate reasons. Unable means the responsible person has disabilities of his/her own which prevent caregiving. These disabilities must be documented/verified by a medical professional on the DHS-54A.

- Do not authorize HHS payments to a responsible relative or legal dependent of the client.
- The extent to which others in the home are able and available to provide the needed services. Authorize HHS only for the benefit of the client and not for others in the home. If others are living in the home, prorate the IADL's by at least 1/2, more if appropriate.
- The availability of services currently provided free of charge. A written statement by the provider that he is no longer able to furnish the service at no cost is sufficient for payment to be authorized as long as the provider is not a responsible relative of the client.
- HHS may be authorized when the client is receiving other home care services if the services are not duplicative (same service for the same time period).

Adult Services Manual (ASM) 9-1-2008

The Department issued an Interim Policy Bulletin effective October 1, 2011. It states 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.

DHS Interim Policy Bulletin 10/1/11

This ALJ is applying the Interim Policy effective October 1, 2011. There was new policy published in the online version of the Adult Services Policy, however, it was not published until ██████████. It states that it has an effective date of ██████████, however, was not published, therefore, is not relied on in this Decision and Order.

The material facts are not in dispute in this matter. The Appellant's legal guardian stipulated the Appellant is capable of performing his own personal care, otherwise known Activities of Daily Living, without physical assistance. In the policy these are defined and listed as bathing, grooming, dressing, toileting, transferring, eating, respiration and mobility. The Policy effectuated October 1, 2011 eliminates HHS

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eligibility for IADLs (medication administration, housework, shopping, laundry and meal preparation) unless there is a need for physical assistance with an ADL, as determined by an Adult Services Worker. The policy states the ASW is required to make a home call to complete a comprehensive evaluation of the beneficiary to determine whether s/he has a need for an Activity of Daily Living before implementing the new policy. Here, the legal guardian waived the Appellant's right to that step on the telephone by indicating there was no need for her to drive over to the Appellant's home and be present for a home call when she did not dispute the fact that he does not require assistance performing an Activity of Daily Living. The issue of a lack of in-home comprehensive assessment was not raised at hearing. This ALJ finds it was waived by the guardian.

Uncontested evidence was presented establishing the Appellant lacks insight into the consequences of failure to clean his home, wash his clothes and remove old, moldy food from his refrigerator. The photographic evidence presented supports the claims that he lacks insight into how and when to perform cleaning and home maintenance sufficiently to maintain reasonably clean and hygienic conditions. He will not wipe mouse droppings from his kitchen counter, thus increasing his own risk of illness and also increasing the risk of spreading disease.

Furthermore, uncontested, credible evidence was presented establishing the Appellant is not capable of accurately administering his own medications. He has a court order for Haldol injections, which is consistent with the testimony provided asserting he does not take his other medications appropriately without assistance. He has heart medication which cannot be chewed. He has ended up in the emergency room of a hospital because of his heart condition and inability to properly take medication without assistance. The Appellant is dependent upon his sister (HHS provider) for his medication set up, as well as shopping for appropriate food, meal preparation and clean up. He is diabetic yet, lacks insight into how inappropriate food choice impacts his physical health. The lack of insight is not a behavioral choice, rather, is resultant from his mental illness. He is dependent upon his provider to select and prepare appropriate food to maintain his health. It is unequivocally established with uncontested, credible evidence that the Appellant requires hands on support with instrumental activities of daily living in order to reside in the community without jeopardizing his physical health.

The new policy enacted by the Department of Human Services does not provide HHS payment assistance for those with a medical need for assistance with Instrumental Activities of Daily Living, including medication administration, unless a worker determines there is also a need for physical assistance with an Activity of Daily Living. The eligibility requirements are more stringent than before. This ALJ has no authority to disregard the policy or make exceptions. Despite the fact that the medical risks to this Appellant are evident, this ALJ must apply the policy as written

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department has the support of policy for its termination of the Home Help Services benefits of the Appellant.

IT IS THEREFORE ORDERED that:

The Department's decision is **AFFIRMED**.

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

cc:



Date Mailed: 5-29-12

***** 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.