

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

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IN THE MATTER OF:

██████████

Appellant

Docket No. 2012-37705 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 ██████████ ██████████ represented the Appellant. ██████████ the Appellant, appeared and testified.

██████████, 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?

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 participating in the Home Help Services program.
2. The Appellant has COPD, osteoporosis and back pain.
3. On or about ██████████, the ASW assigned to the Appellant's HHS case completed a home call, in conjunction with a review of her HHS case.
4. The ASW discussed each of the personal care activities listed as Activities of Daily Living with the Appellant at the home call.

5. The ASW was informed the Appellant's granddaughter perms her hair for her and specifically informed the Appellant HHS does not compensate providers for that assistance.
6. The ASW was specifically informed by the Appellant she is able to bathe, toilet and transfer herself. She directly observed her walk unassisted inside of her home. She saw her get out of a chair unassisted during the assessment.
7. Following the in-home assessment the ASW determined the Appellant did not require physical assistance with any of the Activities of Daily Living as listed as defined in policy.
8. On ██████████ the Department sent the Appellant an Advance Action Notice which informed her that the HHS payment assistance would be terminated effective ██████████
9. On ██████████, the Appellant's Request for Hearing was received.

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's 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*

In this case the material issue is whether the Appellant has the ability to perform her own Activities of Daily Living. If she is, she no longer qualifies for payment assistance with Instrumental Activities of Daily Living through the HHS program.

The Department's worker went to her home to complete a functional assessment ██████████, in conjunction with a case review. The Appellant had been participating with the HHS program prior to the assessment. She had been authorized to receive payment assistance for a provider to help with grooming, meal preparation, laundry, shopping and housework. She had not been receiving assistance with any of the approved personal care activities designated as the Activities of Daily Living in the Adult Services Manual. In error, she had been authorized for grooming assistance because her granddaughter perms her hair. The worker provided testimony she had discussed each of the personal care activities with the Appellant at the assessment. The Appellant informed the worker she was able to dress, bathe, toilet and transfer herself. The ASW directly observed the Appellant walking and getting out of a chair during the assessment, without assistance. The Appellant told the ASW she had good and bad days. She is tired on her bad days. She never informed the worker she is unable to perform her own self care. These activities consist of bathing, dressing, grooming, transferring, mobility, toileting and eating. The worker did explain to the

Appellant that the program could not pay for her granddaughter to perm her hair as part of grooming and removed it from the Appellant's assistance.

The Appellant's representative is her granddaughter and chore provider. She has been paid to provide assistance with laundry, housekeeping, meal preparation, shopping and grooming for her grandmother. At hearing, the Appellant's representative testified her grandmother cannot do all the things she needs done. She said there are some things she can do but she cannot cook her own meals or clean. She said she has been sick lately and she has taken her back and forth to the doctor quite a bit. She did not dispute the worker's testimony. She said her grandmother now has grab bars installed for the toilet and bathtub.

The Appellant testified on her own behalf. She said she is sick and tired. She has asthma and a bad infection.

This ALJ considered the evidence presented from each party. There is no evidence of record that could support a finding she is in need of physical assistance with bathing, dressing, grooming, toileting, walking or transferring. In short, there is no evidence she requires physical assistance with an Activity of Daily Living as currently defined in policy. This ALJ is sympathetic to the Appellant's position. She is suffering from COPD. She no doubt tires easily. She is also afflicted with cataracts, back pain and osteoporosis. She is elderly. It is clear she requires physical assistance with her Instrumental Activities of Daily Living in order to function in the community. The DHS policy no longer provides assistance to people with her level of needs due to policy changes enacted October 1, 2011. There is no assistance program known to this ALJ available free of charge to help those in the position of the Appellant.

Because this ALJ cannot find evidence to support a finding she requires physical assistance with any of the Activities of Daily Living as defined in the Adult Services Manual, she is no longer qualified for HHS under the new policy.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department was within its rights when it determined that the Appellant is ineligible for HHS and terminated the Appellant's HHS assistance.

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

**Docket No. 2012-37705 HHS
Decision and Order**

cc:



Date Mailed: 6-25-12

***** 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.