

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

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IN THE MATTER OF:

██████████,

Appellant

Docket No. 2012-37720 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. ██████████ Case Manager, Home Network New Passages, and ██████████ appeared as witnesses for the Appellant. ██████████ 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 HHS.
2. The Department received medical certification in ██████████ that the Appellant was diagnosed with fibromyalgia, osteopenia, and osteoporosis. ██████████
3. The Appellant has been authorized for HHS for assistance with the Instrumental Activities of Daily Living ("IADLs") of housework, laundry, and shopping and meal preparation. ██████████
4. The Appellant's ██████████ is her HHS provider. ██████████

5. 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.
6. On ██████████, the ASW completed a home visit for a review of the Appellant’s HHS case. The ASW asked if there had been any changes since the last visit and discussed that Appellant’s ability to take care of her personal needs. The Appellant reported needing assistance with activities like dressing when she is in pain, and was observed to walk slowly and braced her back on the wall prior to adjusting a security gate during the assessment. ██████████
7. Based on the available information, the ASW concluded that the Appellant could complete ADLs more often than she needs assistance, therefore, she would no longer be eligible for services. ██████████
8. 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. ██████████
██████████
9. On ██████████ the Appellant’s doctor wrote a letter stating that the Appellant has diagnoses of chronic pain r/t fibromyalgia & degenerative joint disease, COPD, bipolar disorder, and GERD. In part, the doctor indicated that the Appellant needs assistance with the ADLs of bathing, grooming, and mobility. ██████████
10. On ██████████, the Appellant’s request for hearing was received by the Michigan Administrative Hearing System. ██████████
11. The Appellant requires and has been receiving some hands on assistance with ADLs, at least some days each week.

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 has been ranked as functional level 1 for all ADLs and the IADL of medication, and as a functional level 3 for the IADLs of housework, shopping, laundry

and meal preparation. [REDACTED] The Appellant had been authorized for HHS for assistance with the IADLs of housework, laundry, and shopping and meal preparation. [REDACTED]

On [REDACTED], the ASW completed a home visit for a review of the Appellant's HHS case. The ASW asked if there had been any changes since the last visit and discussed that Appellant's ability to take care of her personal needs. The Appellant reported needing assistance with activities like dressing when she is in pain, and was observed to walk slowly and braced her back on the wall prior to adjusting a security gate during the assessment. Based on the available information, the ASW concluded that the Appellant could complete ADLs more often than she needs assistance, therefore, she would no longer be eligible for services. [REDACTED]
[REDACTED]

The Appellant disagrees with the termination and testified that she has intense pain and needs help more often than not. She described needing assistance with activities like opening food/drink containers, carrying even a bowl of cereal, dressing, and getting on/off the toilet. She also submitted a letter indicating trouble with additional activities including brushing/combing hair, opening medicine containers, cleaning or gluing her dentures, and gripping/grasping items. The Appellant explained that the details she described for this hearing were not discussed during the home visit because she was in pain that day, was leaving to go to a doctor appointment and her [REDACTED] was trying to get the baby ready to go [REDACTED]

The Appellant's [REDACTED] testified that they were going to try to have additional services added to the HHS authorization last spring, but the doctor never completed the form and the prior ASW told them the Appellant would not qualify for additional services. She stated that the Appellant is needing more and more assistance with personal care over time. [REDACTED] The Appellant and [REDACTED] testified that the Appellant has some good days, or parts of days that are good, but needs some help at least part of the day 4-5 days a week. [REDACTED]

The Appellant's Case Manager testified she sees the Appellant weekly. She stated that the Appellant is always in pain, has difficulty with walking, sitting, opening containers, drinks out of cups with lids to prevent spills, grasping and turning door knobs, and holding/cleaning dentures. She indicated there are additional diagnoses that have not been documented for the HHS case relating to mental health. [REDACTED]
[REDACTED]

The evidence does not support a termination of the Appellant's HHS case. The ASW's testimony and home visit notes indicate she observed the Appellant having some difficulty during the home visit and that the Appellant reported needing assistance with ADLs, like dressing, at times. It appears that the ASW did not doubt that the Appellant needs assistance sometimes, but determined a termination was appropriate because she believed the Appellant could complete ADLs independently more often than not. [REDACTED]

However, if the Appellant has a need for some hands on

assistance with ADLs, even if is not every day, a ranking of 3 would be appropriate and the authorization of HHS hours for these activities would reflect that it is only some days per week. The testimony of the Appellant, [REDACTED], and the Case Manager all indicate some hands on assistance is needed with both ADLs and IADLs multiple days per week. This is also supported by the letter from the Appellant's doctor indicating additional diagnoses and a need for assistance with the both ADLs and IADLs. [REDACTED]

[REDACTED] 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 in light of the evidence that the Appellant has additional diagnoses and needs for assistance. (Adult Services Manual (ASM) 115, 11-1-2011, page 1 of 3)

There was sufficient credible evidence presented establishing that the Appellant needs and has been receiving hands on assistance with ADLs. A need for assistance with at least dressing was reported at the [REDACTED] home visit. The Appellant's functional ranking for at least the ADL of dressing shall be adjusted to a level 3. A new assessment is necessary to determine the Appellant needs for hands on assistance with ADLs and the frequency assistance is provided with these activities.

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 Appellant's HHS case shall be reinstated retroactive to [REDACTED]. The Appellant's functional ranking for at least the ADL of dressing shall be adjusted to a level 3. A new assessment shall be completed to determine the Appellant needs for hands on assistance with ADLs and the frequency assistance is provided with these activities.

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

cc:

[REDACTED]

Date Mailed: 5-25-2012

Lee, Dawn
Docket No. 2012-37720 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 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.