

**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:

Docket No. 2012-37724 HHS

██████████

██████████

██████████

Appellant

_____ /

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 ██████████ ██████████ I represented the Appellant.

██████████, Appeals Review Officer, represented the Department. ██████████ Adult Services Worker ("ASW"), 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 is diagnosed with epilepsy, alcohol dependency and high blood pressure.
3. The Appellant is married.
4. The Appellant resides with ██████████ At least one of the other adults he lives with is a son of his wife.

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5. The Appellant's wife asserts she does not live with the Appellant and her children.
6. The Appellant's wife is a HHS provider for her adult son, who lives with her husband.
7. On or about [REDACTED], the ASW assigned to the Appellant's HHS case completed a home call, in conjunction with a review of his HHS case.
8. The ASW discussed each of the personal care activities listed as Activities of Daily Living with the Appellant at the home call.
9. The ASW received 2 different DHS-54A (Medical Needs) forms from the Appellant's doctor. The 54A dated [REDACTED] indicated he required assistance with Instrumental Activities of Daily Living only.
10. The 54A dated [REDACTED] included the Instrumental Activities of Daily living as well as transferring.
11. Because of the discrepancy in the 2 different 54A forms, the worker telephoned the doctor's office and spoke with the doctor's assistant. She informed her that the Appellant does not require assistance with Activities of Daily Living, only Instrumental Activities of Daily Living.
12. The worker inquired of the assistant why transferring had been circled on the form submitted [REDACTED] and was told the doctor thought that transferring indicated the Petitioner required help with transportation.
13. The worker determined the Appellant did not require physical assistance with Activities of Daily Living as defined in the HHS policy.
14. On [REDACTED] the Department sent the Appellant an Advance Action Notice which informed him that the HHS payment assistance would be terminated effective [REDACTED].
15. On [REDACTED] 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 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,
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In this case the material issue is whether the Appellant has the ability to perform his own Activities of Daily Living. If he is, he no longer qualifies for payment assistance with Instrumental Activities of Daily Living through the HHS program.

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The Department's worker went to his home to complete a functional assessment [REDACTED], in conjunction with a case review. The ASW was informed by his allegedly estranged wife that he had been hospitalized with heart issues and required more assistance than in the past. The Appellant sat quietly during the assessment with his head down while his wife talked. The narrative notes indicate the Appellant has a new doctor. Shortly thereafter the worker received a DHS-54A, Medical Needs, for him. She telephoned the doctor's office and spoke with the doctor's assistant. The assistant informed the worker that the Appellant is not in need of bathing, walking, dressing, grooming or transferring assistance. She was told he does have a walker but that he does not require physical assistance.

The ASW also received documentation from the Appellant's wife. The documentation received is a copy of a lease agreement (for housing) listing the Appellant's wife as the lessee. The lease is for a residence in Detroit, not the Appellant's. The Appellant's wife is not paid as his provider according to DHS records.

The Appellant's wife testified at hearing. She stated she does not reside with the Appellant. She is the HHS provider for her adult disabled son, who resides with the Appellant. She also asserted she is employed working [REDACTED] (sic) Monday-Friday. She stated she is not the Appellant's provider. She said her other son is the provider for the Appellant. During her testimony she stated "I get over there [REDACTED]-[REDACTED]. I go in the kitchen and cook something for him." She stated she serves him his food and he stays in bed watching television. She was referring to her husband when she described what she does. She requested this ALJ obtain additional medical evidence from the Appellant's doctor prior to decision. She was informed that request would not be met and it was not necessary to the disposition of this case.

This ALJ considered the evidence presented from each party. The credible evidence is that from the ASW. She had relevant collateral contacts which corroborate her determination the Appellant does not require physical assistance with his activities of daily living as defined in policy. This ALJ relies on her testimony to find she properly determined the Appellant is no longer eligible for HHS assistance because he does not meet the new eligibility criteria published in the new policy. Additionally, this ALJ finds that if it were determined the Appellant required physical assistance with any of his Activities of Daily Living; he would not meet eligibility requirements because he is married and his wife is able and available to meet those needs.

Although the Appellant's representative (his wife) denies residence in the home with the Appellant, this claim is not found credible given all the testimony and circumstances brought to light at hearing. This ALJ finds the Appellant's wife is able and available to provide any care he may need. The evidence supporting this determination is the testimony from his wife indicating she is already the chore provider for her own adult son; who is disabled and lives with the Appellant. Furthermore, the Appellant's wife testified she is going to the home and actually providing the services. Finally, the document she provided purporting to establish residency in another city is not reliable and it is immaterial to whether she is able and available.


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This ALJ finds the Department properly terminated the HHS assistance for the Appellant because he does not meet the eligibility criteria for the reasons stated above.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly 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

cc:



Date Mailed: 6-26-12

***** 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.