STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH
P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 334-9505

IN THE MATTER OF:

[redacted]

Docket No. 2012-37741 HHS
Case No. [redacted]

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 on [redacted] the Appellant, appeared on her own behalf. [redacted] caregiver, appeared as a witness for the Appellant. [redacted], represented the Department. [redacted]"), and [redacted], appeared as witnesses for the Department.

ISSUE

Did the Department properly deny the [redacted] application?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. On [redacted] the Appellant's physician submitted a DHS-54A Medical Needs form. (Exhibit 1, page 6)

2. On or about [redacted] the Department received a referral for the Appellant to the [redacted] program. (Exhibit 1, page 7)

3. On [redacted] the [redacted] denied the Appellant's [redacted] referral because the [redacted] form was not completed correctly. (Exhibit 1, pages 7 and12)

4. On [redacted] the [redacted] form was re-submitted. The form indicates that the Appellant had been diagnosed with chronic back pain and headaches. The physician certified that the Appellant had a medical need for assistance with personal care activities (Exhibit 1, page 6)

5. On [redacted] the Department sent the Appellant a home visit letter.

(Exhibit 1, page 7)

6. On [redacted] the [redacted] went to the Appellant's home to complete an initial evaluation. The Appellant reported being able to perform personal care activities, including bathing and dressing. The Appellant reported being able to cook some light meals and needing some assistance with housework, laundry, and shopping due to her vision, pain and mental status. (Exhibit 1, pages 11-12)

7. Based on the information available at the time of the assessment, the ASW concluded that the Appellant did not have a medical need for hands on assistance with any [redacted]) or Instrumental [redacted] (Exhibit 1, page 13)

8. On [redacted] the Department sent the Appellant an Adequate Action Notice which informed her that her HHS application was denied because medical conditions do not prevent her from completing all ADLs and IADLs. (Exhibit 1, pages 7-10)

9. On [redacted] the Appellant's hearing request was received by the [redacted] (Exhibit 1, page 5)

CONCLUSIONS OF LAW

The [redacted] 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.

[redacted]) 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 363, 9-1-08), pages 2-5 of 24 addresses the issues of assessment and service plan development:

> **COMPREHENSIVE ASSESSMENT**
>
> The Adult Services Comprehensive Assessment (FIA-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 client in his/her place of residence.
- An interview must be conducted with the caregiver, if applicable.
- Observe a copy of the client'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 redetermination.
- 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 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 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 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:

- 5 hours/month for shopping
- 6 hours/month for light housework
- 7 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.

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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 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 same time period).

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Services not Covered by Home Help Services

Do **not** authorize HHS payment for the following:

- Supervising, monitoring, reminding, guiding or encouraging (functional assessment rank 2);
- Services provided for the benefit of others;
- Services for which a responsible relative is able and available to provide;
- Services provided free of charge;
- Services provided by another resource at the same time;
- Transportation - See Program Administrative Manual (PAM) 825 for medical transportation policy and procedures.
- Money management, e.g., power of attorney, representative payee;
- Medical services;
- Home delivered meals;
- Adult day care.

Adult Services Manual (ASM) 363, 9-1-2008, Pages 2-15 of 24

The [redacted] issued Interim Policy Bulletin ASB 2011-001 with an effective date of [redacted] 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 [redacted] 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 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.

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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 wit h a great deal of human assistance and/or assistive technology.
5. Dependent
   Does not perform the ac tivity even with human assistance and/or assistive technology.

HHS paym ents may only be authorized for needs ass essed at the 3 level or greater.

An indiv idual must be assesse d with at least one activity of daily living in order to be eligible to receive home help services.
Note: If the assessm ent determines a need for an ADL at a level 3 or greater but these se rvices 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 rece ive assistance. Ms. Smith would be eligible to receive as sistance with IADLs if the assessment determined a need at a level 3 or greater.

See ASM 121, Functional A ssessment Definitions and Ranks for a description of the rank ings for activities of daily living and instrumental activities of daily living.

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Time and Task

The specialist will allocate time for each task assessed a rank of 3 or higher, based on in terviews wit h the client and provider, observation of the clie nt's abilities and use of the reasonable time schedule (RT S) as a **guide**. The RT S can be found in ASCAP under the Payment module, Time and Task screen. When hours exc eed the RT S rationale **must** be provided.

An assessment of need, at a r anking 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 cure 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 adjoined 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 1-5 of 6

Services not Covered by Home Help

Home help services must **not** be approved for the following:

- Supervising, monitoring, reminding, guiding, teaching or encouraging (functional assessment rank 2).
- Services provided for the benefit of others.
- Services for which a responsible relative is **able** and **available** to provide (such as house cleaning, laundry or shopping).
- Services provided by another resource at the same time (for example, hospitalization, MI-Choice Waiver).
- Transportation - See Bridges Administrative Manual (BAM) 825 for medical transportation policy and procedures.
- Money management such as power of attorney or representative payee.
- Home delivered meals.
- Adult or child day care.
- Recreational activities . (For example, accompanying and/or transporting to the movies, sporting events etc.)

Note: The above list is not all inclusive.

Adult Services Manual (ASM) 101, 11-1-2011,
Pages 3-4 of 4.

In the present case, it appears that the Department received a referral for the Appellant to the [redacted] program on or about [redacted] (Exhibit 1, page 7) The Department had received a DHS-54A Medical Needs form from the Appellant's physician on July 18, 2011. (Exhibit 1, page 6) It appears that on [redacted] the ASW denied the Appellant's initial July 2011 HHS referral because the DHS-54A Medical Needs form was not completed correctly. (Exhibit 1, pages 7 and 12) Then, on August 9, 2011, the DHS-54A Medical Needs form was re-submitted. (Exhibit 1, page 6) It appears that upon resubmission of the medical form, the Department reconsidered the Appellant's HHS referral. On [redacted] the Department sent the Appellant a home visit letter and the home visit was completed on [redacted] (Exhibit 1, pages 7 and 11-12) The Department denied the Appellant's HHS request again on [redacted] based on the ASW's determination that the Appellant's medical conditions did not prevent her from completing ADLs and IADLs. (Exhibit 1, pages 7-10) The Appellant's [redacted] Request for Hearing was a timely appeal of the [redacted] denial.

The DHS-54A Medical Needs form completed by the Appellant's physician indicates that

the Appellant had been diagnosed with [redacted]. The physician certified that the Appellant had a medical need for assistance with personal care activities. (Exhibit 1, page 6)

On [redacted] the ASW went to the Appellant's home to complete an initial evaluation. The Appellant and a friend were present. The Appellant remained lying on the couch under a blanket because she had taken medication for pain. However, the Appellant also stated she did not have the prescription bottle for her pain medication because she had run out. The Appellant reported her diagnoses and impairments, including conditions not documented on the DHS-54A Medical Needs form. The Appellant did not have any adaptive equipment and stated she may get a cane. The Appellant stated she was able to walk unassisted, could take a bath and complete her personal care. The Appellant reported being able to cook some light meals and needing some assistance with housework, laundry, and shopping due to her vision, pain and mental status. (Exhibit 1, pages 11-12)

The ASW determined that the Appellant did not have a medical need for assistance with ADLs or IADLs. The ASW's notes and testimony indicate the ASW understood the Appellant was able to complete her own ADLs. Regarding IADLs, the ASW found that the Appellant did not have a medical disability that prevented her from completing these activities when she was not in pain. Accordingly, the ASW denied the Appellant's HHS application. Further, the new HHS policy requires the need for hands on assistance with at least one ADL to be eligible for HHS. (ASW Testimony and Exhibit 1, pages 11-13)

The Appellant disagrees with the denial and testified that she is legally blind, has problems seeing even with corrective lenses, and has pain and headaches if she keeps her eye open too long. The Appellant also reported back pain from a car accident, torn knee meniscus requiring two surgeries, and a need for upcoming surgery for fibroid tumor removal. However, the Appellant testified she still had not gotten a cane or knee brace as of the [redacted] hearing date. When asked about each ADL, the Appellant testified she needs help at times with bathing, transferring and mobility. The Appellant explained that some times she has trouble walking, is extra tired, has knee pain and/or her balance is off. The Appellant stated she can do some limited driving and has a handicap tag, but has a lot of accidents. (Appellant Testimony) The Appellant's caregiver testified that the Appellant needs help with a lot of things, even things she says she can do by herself. The caregiver indicated he assists with laundry, shopping, transporting to the doctor's office, taking out the garbage, things around the house, finding clothes, and getting in/out of the tub. (Caregiver Testimony)

There was insufficient evidence to establish the Appellant's reported needs for assistance with ADLs and IADLs. Under the Department policy, the medical professional certifies that the client's need for service is related to an existing medical condition but does not prescribe or authorize personal care services. Adult Services Manual (ASM) 363, 9-1-2008, Page 9 of 24, Adult Service Manual (ASM) 115, [redacted] Page 1 of 3. The Appellant's statements to the ASW during the home visit and in her testimony during these hearing proceedings indicate she needs assistance primarily due to eye and knee impairments. (Exhibit 1, pages 11-12 and Appellant Testimony)

However, the physic ian only documented diagnos es of chronic back pain and headaches. (Exhibit 1, page 6) The Appellant's statements have also been inconsistent. Examples inclu de reporting at the home visit t hat she was not able to sit up due to pain and t aking pain medication but not being able to show the ASW the prescription bottle because she had run out as well as reporting being independent with ADLs at the [redacted] home visit, but testifying during the hearing proceedings that that she sometimes needs some assistance with bathing, transferring and mobility. (Exhibit 1, pages 11-12 and Appellant T estimony) The credible ev idence was not sufficient to establish a need for hands on a ssistance, functional r anking 3 or greater, with ADLs or IADLs. Accordingly, the deni al of the Appellant's HHS application is upheld.

At any time, the Appellant can reapply fo r the HHS program a nd submit additional medical verification of her impairments and needs for assistance.

DECISION AND ORDER

The Administrative Law Judge, based on the abov e findings of fact and conclusions of law, finds that the Departm ent properly denied the Appell ant's HHS application bas ed on the available information.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

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

cc: [redacted]

Date Signed: _____

Date Mailed: _____

***** 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 O rder. The Michigan Administrative Hearing System will not order a re hearing 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 o f the Decision and Ord er or, if a timely request for rehearing was made, within 30 days of the receipt of the rehearing decision.