

**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:

██████████,

Appellant

Docket No. 2012-68429 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 ██████████. ██████████, Officer, ██████████ ██████████, represented the Appellant. Dawn Henry, the Appellant, was present. Lisa Lott, caregiver, appeared as a witness for the Appellant. Theresa Root, Appeals Review Officer, represented the Department. Kent Eckersley, Adult Services Worker ("ASW"), and Vivian Hurst, Adult Services Supervisor, appeared as witnesses for the Department.

ISSUE

Did the Department properly assess 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. On or about ██████████, the Department received a referral for the Appellant for the HHS program. (ASW Testimony)
2. On or about ██████████ the Department received the Appellant's application for the HHS program and the medical verification form. (Exhibit 1, page 9)
3. The Appellant has been diagnosed with oral cancer, kidney cancer, and chronic kidney disease. (Exhibit 1, page 11)
4. On or about ██████████, the ASW went to the Appellant's home and completed an in-home assessment for a review of the Appellant's HHS case. The Appellant and a representative from ██████████ were present. The Appellant lives with her mother. The ASW noted the Appellant was very weak, especially in the legs, and need surgery on

her jaw bone. The ASW determined that the Appellant was not totally dependant, but needed some assistance with bathing, grooming, dressing, toileting, transferring, eating, mobility, medication, housework, shopping, laundry, and meal preparation. (Exhibit 1, pages 9-10 and 12-14; ASW Testimony)

5. The ASW determined that the Appellant ranked at: level 2 for eating; level 3 for bathing, grooming, dressing, toileting, transferring, and mobility; a level 4 for housework, shopping, laundry, and meal preparation; and a level 5 for medication. The ASW authorized 40 hours and 34 minutes per month of HHS for assistance with the activities ranked at a level 3 or greater, with a total monthly care cost of \$ ██████████. (Exhibit 1, pages 12-15)
6. On ██████████, the Department sent the Appellant a Services and Payment Approval Notice to the Appellant, which informed her that she was approved for HHS with a monthly care cost of \$ ██████████ with a start date of ██████████. (Exhibit 1, pages 5-6)
7. On ██████████, the Appellant's request for hearing was received by the Michigan Administrative Hearing System. (Exhibit 1 page 4)

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) 105, 11-1-11, addresses HHS eligibility requirements:

Requirements

Home help eligibility requirements include all of the following:

- Medicaid eligibility.
- Certification of medical need.
- Need for service, based on a complete comprehensive assessment (DHS-324) indicating a functional limitation of level 3 or greater for activities of daily living (ADL).

- Appropriate Level of Care (LOC) status.

Necessity For Service

The adult services specialist is responsible for determining the necessity and level of need for home help services based on:

- Client choice.
- A completed DHS-324, Adult Services Comprehensive Assessment. An individual must be assessed with at least one activity of daily living (ADL) 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 IADL's if the assessment determines a need at a level 3 or greater.

- Verification of the client's medical need by a Medicaid enrolled medical professional via the DHS-54A. The client is responsible for obtaining the medical certification of need; see ASM 115, Adult Services Requirements.

*Adult Services Manual (ASM) 105,
11-1-2011, Pages 1-3 of 3*

Adult Services Manual (ASM) 120, 5-1-12, addresses the 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 must 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-27, 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 home help services 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.

Home help payments may only be authorized for needs assessed at the 3 level ranking 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 IADL's 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.

Complex Care Needs

Complex care refers to conditions requiring intervention with special techniques and/or knowledge. These complex care tasks are performed on client's whose diagnoses or conditions require more management. The conditions may also require special treatment and equipment for which specific instructions by a health professional or client may be required in order to perform.

- Eating and feeding.
- Catheters or legs bags.
- Colostomy care.
- Bowel program.
- Suctioning.
- Specialized skin care.
- Range of motion exercises.
- Peritoneal dialysis.
- Wound care.
- Respiratory treatment.
- Ventilators.
- Injections.

When assessing a client with complex care needs, refer to the complex care guidelines on the adult services home page.

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 instrumental activities of daily living 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 hours 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) 101, 11-1-11, addresses services not covered by HHS:

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.

On or about ██████████, the ASW went to the Appellant's home and completed an in-home assessment for a review of the Appellant's HHS case. The Appellant and a representative from ██████████ Agency were present. The Appellant lives with her mother. The ASW noted the Appellant was very weak, especially in the legs, and need surgery on her jaw bone. The ASW determined that the Appellant was not totally dependant, but needed some assistance with bathing, grooming, dressing, toileting, transferring, eating, mobility, medication, housework, shopping, laundry, and meal preparation. (Exhibit 1, pages 9-10 and 12-14; ASW Testimony) The ASW determined that the Appellant ranked at: level 2 for eating; level 3 for bathing, grooming, dressing, toileting, transferring, and mobility; a level 4 for housework, shopping, laundry, and meal preparation; and a level 5 for medication. The ASW authorized 40 hours and 34 minutes per month of HHS for assistance with the activities ranked at a level 3 or

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greater, with a total monthly care cost of \$ [REDACTED]. (Exhibit 1, pages 12-15)

The Appellant disagrees with the amount of HHS hours authorized. (Exhibit 1, page 4) The Appellant and her caregiver provided testimony addressing the Appellant's needs for assistance with bathing, toileting, laundry, shopping and meal preparation.

Bathing

The Appellant was ranked as a functional level 3 and authorized 8 minutes 7 days per week (4 hours and 1 minute per month) for assistance with bathing. (Exhibits 1, pages 12 and 15) The ASW testified he understood that the Appellant needed assistance with getting in/out and maybe some minor washing, such as her back. (ASW Testimony)

The Appellant's caregiver testified it takes a bit more time to assist the Appellant with bathing because she is always in pain. It takes time for the Appellant to bathe, she needs help with getting in/out, using the restroom and putting on clothes. (Caregiver Testimony)

While this ALJ understands that activities are often completed together in daily life, the HHS program considers each activity separately. In this case, the ASW authorized HHS hours for bathing, toileting, mobility, transferring and dressing assistance. Accordingly, the time spent with assisting the Appellant to the restroom, which may include mobility, transferring and toileting, as well as assistance with dressing can not be considered as a basis to increase the HHS hours authorized for bathing. The HHS authorization for bathing is upheld.

Toileting

The Appellant was ranked as a functional level 3 and authorized 11 minutes 7 days per week (5 hours and 31 minutes per month) for assistance with toileting. (Exhibits 1, pages 12 and 15) The ASW's notes indicate he understood that the Appellant needed assistance with getting in/out and cleanup. (Exhibit 1, page 12)

The Appellant's caregiver testified that the Appellant has some accidents. (Caregiver Testimony) The Appellant testified the ASW was told about the portable toilet during the home visit, and assistance is needed with emptying it. The Appellant also indicated the ASW did not ask about a lot of things during the assessment. (Appellant Testimony)

The ASW did not recall off hand being told about the portable toilet during the home visit. (ASW Testimony) However, it appears that the ASW had received verification from the Appellant's doctor of multiple diagnoses, including kidney cancer and chronic kidney disease. The Appellant's credible testimony that she has a portable toilet and needs assistance with it is supported by these diagnoses. The ASW's justification notes and the Appellant's testimony are consistent with a functional ranking at level 4. The Appellant's ranking and HHS hours for toileting should be increased in accordance with a functional ranking of level 4.

Housework, Shopping, Laundry and Meal Preparation

The policy implemented by the Department recognizes that in most cases, certain tasks are performed that benefit all members who reside in the home together, such as cleaning, laundry, shopping and meal preparation. Normally, it is appropriate to pro-rate the payment for those tasks in a shared household, as the other household members would still have to clean their own home, make meals, shop and do laundry for themselves if they did not reside with the Appellant. The HHS program will not compensate for tasks that benefit other members of a shared household. Accordingly, the authorized hours for these activities must be prorated under Department policy. Exceptions can be made when there is justification for performing an activity separately, such as incontinence and special dietary needs.

Department policy allows for a maximum of 6 hours per month for housework, 5 hours per month for shopping, 7 hours per month for laundry and 25 hours per month for meal preparation. The Appellant lives with her mother. (Exhibit 1, pages 9-10) The Appellant was ranked as a level 4 for housework, laundry shopping and meal preparation. (Exhibit 1, page 14) The ASW authorized: 6 minutes seven days per week (3 hours and 1 minute per month) for housework; 7 minutes once per week (30 minutes per month) for laundry; 5 minutes once per week (21 minutes per month) for shopping; and 20 minutes seven days per week (10 hours and 2 minutes per month) for meal preparation. (Exhibit 1, page 15)

The HHS hours for housework are already at the maximum allowed in a shared household. The evidence did not establish a need for housework to be completed separately for the Appellant. The HHS authorization for housework is upheld.

The Appellant has been diagnosed with oral cancer, kidney cancer, and chronic kidney disease. (Exhibit 1, page 11) The Appellant and her caregiver provided credible testimony indicating more time is needed for assistance with laundry, shopping and meal preparation due to these impairments. The Appellant has incontinence due to the kidney impairments, her bedding is changed frequently and her laundry is completed separately. The Appellant has special dietary needs due to kidney disease and oral cancer. There are only certain things the Appellant can eat and hold down. The Appellant eats separate foods from her mother, and multiple trips to the store are made for the Appellant's needs each week. Accordingly, meal preparation and shopping are completed separately for the Appellant. (Appellant and Caregiver Testimony) The HHS hours authorized by the ASW for laundry, shopping, and meal preparation are not sufficient to meet the Appellant's needs for assistance with these activities. The HHS hours for laundry, shopping and housework should be exempted from proration and increased to the monthly maximums allowed by policy.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department improperly assessed the Appellant's HHS case in the areas of toileting, laundry, shopping and meal preparation based on the available information.

IT IS THEREFORE ORDERED THAT:

The Department's decision is PARTIALLY AFFIRMED and PARTIALLY REVERSED.

- The Appellant's functional ranking shall be increased to a level 4 for toileting.
- The Appellant's HHS hours for toileting, shopping, laundry and meal preparation shall be adjusted retroactive to the [REDACTED] effective date as follows:
 - Toileting- increase to HHS hours consistent with a functional ranking at level 4
 - Shopping- 5 hours per month
 - Laundry- 7 hours per month
 - Meal Preparation- 25 hours per month

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Colleen Lack
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 1/23/2013

***** 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.