

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

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IN THE MATTER OF:

██████████,

Appellant

Docket No. 2012-21856 HHS
Case No. ██████████

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ) 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 himself. ██████████, his mother, was present and testified.

██████████, Appeals and Review Officer for the Department of Community Health, represented the Department. ██████████, Adult Services Worker for the Department of Human Services was present as a Department witness. ██████████ Adult Services Supervisor for the Department of Human Services, was present as a Department witness.

ISSUE

Did the Department properly deny the Home Help Services (HHS) application of the Appellant?

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 applied for Adult Home Help Services.
2. The Appellant is diagnosed with major depression disorder and severe memory impairment. She reports arthritis in her left leg.
3. The Adult Services Worker went to the Appellant's home to complete a comprehensive assessment ██████████.

4. At the assessment completed ██████████, the Appellant requested assistance with medication, housework, shopping, laundry and meal preparation.
5. The Appellant reported to the worker she is taking care of her own personal needs, runs bath water for herself and bathes herself.
6. As a result of the determination of need and implementation of new policy, the worker determined the Appellant is not qualified for Home Help assistance.
7. The worker's determination was based upon her direct observation at the assessment and her discussion with the Appellant and her son.
8. The Department sent the Appellant an Adequate Negative Action Notice in ██████████.
9. The Appellant appealed the determination on ██████████.

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 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.

ELIGIBILITY FOR HOME HELP SERVICES

Home help services (HHS) are defined as those, which the Agency is paying for through Title XIX (Medicaid) funds. The customer must be eligible for Medicaid in order to receive these services.

Medicaid/Medical Aid (MA)

Verify the customer's Medicaid/Medical aid status.
The customer may be eligible for MA under one of the following:

- All requirements for MA have been met, **or**
- MA spend-down obligation has been met.

Adult Services Manual (ASM) 9-1-2008

Necessity For Service

The adult services worker is responsible for determining the necessity and level of need for HHS based on:

- Customer choice.
- A complete comprehensive assessment and determination of the customer's need for personal care services.
- Verification of the customer's medical need by a Medicaid enrolled medical professional. The customer is responsible for obtaining the medical certification of need. The Medicaid provider identification number must be entered on the form by the medical provider. The Medical Needs form must be signed and dated by one of the following medical professionals:
 - Physician
 - Nurse Practitioner
 - Occupational Therapist
 - Physical Therapist

The physician is to certify that the customer's need for service is related to an existing medical condition. The physician does not prescribe or authorize personal care services.

If the Medical Needs form has not been returned, the adult services worker should follow-up with the customer and/or medical professional.

COMPREHENSIVE ASSESSMENT

The Adult Services Comprehensive Assessment (DHS-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 customer in his/her place of residence.
- An interview must be conducted with the caregiver, if applicable.
- Observe a copy of the customer'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 re-determination.
- 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 customer'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
- 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 the 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:

- Five hours/month for shopping
- Six hours/month for light housework
- Seven 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. If there is a need for expanded hours, a request should be submitted to:

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 the 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 the same time period).

Adult Services Manual (ASM) 9-1-2008

The Department issued an Interim Policy Bulletin effective October 1, 2011. It states 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.

DHS Interim Policy Bulletin 10/1/11

In this case the evidence of record establishes the worker did conduct a comprehensive assessment at the ██████████ home call. Her narrative notes indicate the Appellant is caring for her own activities of daily living, is capable of running her own bath water and bathes herself. She informed the worker her son handles medication administration and performs all the instrumental activities of daily living. Her son stated at hearing he "does everything for her". He said he has to tell her to eat or she won't remember. He testified she is now incontinent. He said that is a newer problem, diagnosed within the last few weeks. He said he was present for the assessment but stepped out of the room for a short time and does not know exactly what was said when he was away. He further testified he has to help his mother in and out of the bathtub, select her clothing for her, assist with shoes or she will put them on the wrong foot and he performs all shopping, meal preparation, laundry and medication assistance. He said he does not help her at all with mobility or transferring. When asked why the

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worker had not been told any of this he stated he did not know such specific information was expected at the assessment.

The worker determined after directly observing the Appellant, speaking with her and her son, that she did not require physical assistance with her activities of daily living. The determination the Appellant does not require physical assistance with activities of daily living resulted in ineligibility for payment assistance through the Home Help program. The worker did not disagree the Appellant requires help with medication, shopping, laundry, housework and meal preparation, however, payment assistance for these tasks cannot be approved unless a determination is made she also requires physical assistance with at least one activity of daily living.

This ALJ has reviewed the evidence of record. The Appellant's representative and witness brought forth evidence of a new medical condition requiring physical assistance be rendered to the Appellant. This was not true at the time of assessment, however, back in ██████████. This cannot be evidence relied on to find the Department has erred. The testimony from the Appellant's son that he has to remind his mother to eat or she will not eat is found credible, however, verbal prompting, reminding and guiding is not a service need level that qualifies for payment assistance through this program. The testimony relative to the physical assistance rendered the Appellant with personal care was not found as credible as the testimony about prompting, reminding and guiding. The Appellant's son had an opportunity to convey all this to the worker at the assessment but failed to make it clear he was providing hands on assistance with anything other than instrumental activities of daily living. This does damage the claims being made at hearing that he has to provide physical assistance with personal care.

The assessment completed in ██████████ yielded a determination the Appellant was able to perform her own personal care, thus did not meet eligibility requirements. There is insufficient credible evidence of record to find the Department's determination was made in error. This ALJ did not find the testimony from the Appellant's representative or son more persuasive or credible than that of the Department's witness, thus the Department's determination will not be overturned as a result of this hearing.

The policy clearly requires hands on assistance is required for an activity of daily living in order to receive assistance with instrumental activities of daily living. As a result of the assessment the worker determined no hands on assistance was required for any activity of daily living, thus the worker's decision to deny the payment assistance for Home Help Services was proper at the time it was made. The Appellant is free to re-apply at any time.


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The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department has properly denied the Home Help Services benefits of the Appellant.

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: 4/5/2012

***** 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.