

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

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IN THE MATTER OF:

██████████,

Appellant

Docket No. 2012-22564 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 ██████████, represented the Appellant. ██████████ Appeals Review Officer, represented the Department. ██████████ Adult Services Worker ("ASW"), and ██████████, 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 ██████████ the Appellant's physician completed a DHS-54A Medical Needs form listing diagnoses of mood disorder and schizoaffective disorder. The physician certified that the Appellant has a medical need for assistance with taking medications, meal preparation, shopping, laundry, and housework. ██████████
2. On ██████████, the Appellant applied for the HHS program and provided a copy of the ██████████ DHS-54A Medical Needs form. ██████████
3. On ██████████ the Appellant's Request for Hearing was received indicating the application for HHS had been filed in ██████████ but there had been no response from his ASW. ██████████

4. On ██████████, the ASW made a visit to the Appellant's home to conduct an initial HHS assessment. The Appellant's ██████████ was also present. The ASW reviewed mental health reports indicating additional diagnoses of mild mental retardation, bipolar and ADHD. The Appellant's ██████████ reported a need for 24 hour supervision but reported that the Appellant can bathe and groom himself. The Appellant's past hospitalizations, current medications and treatments and his behaviors were reported to the ASW. No physical impairments were reported or observed. ██████████
5. The ASW determined that the Appellant only needed hands on assistance with Instrumental Activities of Daily Living ("IADLs"), and ranked him as independent with each of the Activities of Daily Living ("ADLs"). ██████████
██████████
6. On ██████████ the Department sent a Services and Payment Approval Notice to the Appellant indicating an HHS authorization of ██████████
7. The Appellant's ██████████ was eventually enrolled as the Appellant's HHS provider. ██████████
8. On ██████████ the Department sent the Appellant an Advance Action Notice which informed him that effective ██████████, his HHS case would be terminated based on the new policy which requires the need for hands on services with at least one ADL. ██████████
9. The Appellant requires supervision, reminders, prompting and other verbal assistance with ADLs as well as hands on assistance with IADLs.

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 363, 9-1-08), addresses the comprehensive assessment, functional assessment, time and task authorization, service plan development, necessity for services, and services not covered:

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.

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-54-A.

- 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).

Necessity For Service

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

- Client choice.
- A complete comprehensive assessment and determination of the client's need for personal care services.
- Verification of the client's medical need by a Medicaid enrolled medical professional. The client 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.

Exception: DCH will accept a DHS-54A completed by a VA physician or the VA medical form in lieu of the medical needs form.

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

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 Adult Services Manual Policy was update effective 11-1-11. The updated policy regarding the comprehensive assessment 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 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.

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 it's completion.**

Example: A client needs assistance with cutting up food. The specialist would only pay for the time required to cur 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*

The updated policy also includes the list of services not covered by the HHS program. *Adult Services Manual (ASM) 101, 11-1-2011, Pages 3-4 of 4.*

In the present case, the Appellant applied for the HHS program on ██████████ and provided a DHS-54A Medical Needs form completed by his doctor on ██████████. The Appellant's doctor listed diagnoses of mood disorder and schizoaffective disorder and certified that the Appellant has a medical need for assistance with taking medications, meal preparation, shopping, laundry, and housework. ██████████ It is clear that the Department was unable to process the Appellant's HHS application within the 45 day standard of promptness noted in Adult Services Manual (ASM) 363, 9-1-2008 page 1 of 24 and the updated Adult Services Manual (ASM) 110, 11-1-2011 page 1 of 2)

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On [REDACTED], the ASW made a visit to the Appellant's home to conduct an initial HHS assessment. The Appellant's [REDACTED] was also present. The ASW reviewed mental health reports indicating additional diagnoses of mild mental retardation, bipolar and ADHD. The Appellant's [REDACTED] reported a need for 24 hour supervision but reported that the Appellant can bathe and groom himself. The Appellant's past hospitalizations, current medications and treatments and his behaviors were reported to the ASW. No physical impairments were reported or observed. [REDACTED]

The ASW determined that the Appellant only needed hands on assistance with IADLs. The Appellant was ranked as a level 5 for medication and meal preparation, a level 4 for laundry and shopping, and a level 3 for housework. The ASW ranked the Appellant as independent with each of the ADLs. [REDACTED]

Because the Appellant's HHS application was received prior to the HHS policy change requiring a need for hands on assistance with at least one ADL, the ASW developed a HHS time and task authorization for the Appellant's case, which reflected proration of the authorized HHS hours for the IADLs of housework, shopping, laundry and meal preparation based on the shared household. [REDACTED] The ASW authorized a total of 18 hours and 33 minutes for assistance with medication, housework, laundry, shopping, and meal preparation with a total monthly care cost of [REDACTED]. [REDACTED] The ASW presumably was able to determine that the Appellant's [REDACTED] had been providing these services to the Appellant since the [REDACTED] application. Therefore, she issued the [REDACTED] Services and Payment Approval Notice indicating the HHS authorization of [REDACTED] was retroactive to [REDACTED] and sent a [REDACTED] email indicating a retroactive authorization requiring an approval and noting she was still awaiting a provider ID number to be generated for the Appellant's [REDACTED]. [REDACTED]

The Appellant's [REDACTED] provided credible testimony regarding the Appellant's needs for assistance. She indicated that the Appellant requires supervision, reminders, prompting and other verbal assistance with ADLs, such as bathing and grooming, as well as hands on assistance with IADLs of medication, housework, shopping, laundry and meal preparation. The Appellant's [REDACTED] stated that when the Appellant responds to the verbal assistance, he completes activities like bathing on his own. Her testimony indicated that when the Appellant does not comply with reminders or prompting for bathing, grooming, etc., these activities are not done. The Appellant's [REDACTED] also testified that they assist the Appellant to get to his doctors appointments. [REDACTED]

This ALJ does not doubt that the Appellant's [REDACTED] provide a great deal of care and assistance to the Appellant. However, the HHS program does not include all the types of assistance the Appellant requires. Medical transportation is separate from the HHS program. The Appellant may wish to inquire about assistance with medical reimbursement at the Department of Human Services office where his Medicaid Eligibility Specialist is located. Additionally, the Appellant may wish to inquire about

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programs through Community Mental Health that cover supervision, reminders, and other non-hands on assistance with ADLs.

The Appellant's ██████████ credible testimony would support a ranking at level 2 for ADLs like bathing and grooming, but it is not clear that the Appellant's ██████████ reported that verbal assistance was needed with these activities. However, the HHS program does not compensate for supervision, guiding, reminding, prompting or other verbal assistance. Accordingly, even if an error was made by ranking the ADLs as a level 1 instead of a level 2 for ADLs, this would not affect the HHS payment that was authorized. Additionally, such an error would not affect the Appellant's eligibility for ongoing services under the policy that went into effect ██████████, which requires a need for hands on assistance, functional ranking 3 or greater, with at least one ADL. There was no evidence presented to establish that the Appellant requires any hands on assistance with ADLs. Accordingly, he is not eligible for ongoing HHS under the updated policy.

The uncontested evidence indicates that the Appellant's application for the HHS program was submitted prior to the ██████████ policy change. Accordingly, the ASW properly authorized HHS for only IADLs retroactive to the ██████████ application date. The authorization of HHS hours for only IADLs is supported by the DHS-54A Medical Needs form completed by the Appellant's doctor on ██████████ (Exhibit 2) However, the amount of HHS authorized does not appear to be sufficient regarding housework, laundry, and shopping.

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 others would have to clean their own home, make meals, shop and do laundry for themselves if they did not reside with the Appellant. Accordingly, the authorized hours for these activities are to be prorated under Department policy.

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. Department policy also requires proration in a shared household, and it was not contested that the Appellant lives with other adults. The ASW authorized 1 hour and 17 minutes per month for housework, 1 hour per month for laundry, and 43 minutes per month for shopping. These hours cannot be reasonably expected to meet the Appellant's needs for assistance with housework, laundry and shopping. The Appellant's ██████████ credible testimony indicated that the Appellant does not participate in these tasks. The HHS hours shall be adjusted to 3 hours for housework, 3 hours and 30 minutes for laundry, and 2 hours and 30 minutes for shopping. The HHS authorizations for medication and meal preparation were appropriate for the Appellant's rankings and household composition.

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The ASW's testimony indicated that she intended to authorize HHS for the IADLs only from the [REDACTED] application date through [REDACTED], when the policy changed. However, there was no indication on the [REDACTED] Services Approval Notice in the comments section or elsewhere that the authorization was only for a closed period. [REDACTED] Written advance notice of a reduction, suspension, or termination is required. *42 CFR § 431.211 through 431.214, Adult Services Manual (ASM) 362 12-1-2007, Adult Services Manual (ASM) 150 11-1-2011.* The Advance Negative Action Notice indicating the Appellant's HHS case would be terminated based on the new policy was not issued until [REDACTED] and indicated an effective date of [REDACTED]. [REDACTED] Accordingly, the Appellant's HHS authorization for IADLs should cover the time period of [REDACTED] through [REDACTED]

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 regarding housework, shopping, laundry, and meal preparation.

IT IS THEREFORE ORDERED THAT:

The Department's decision is PARTIALLY AFFIRMED and PARTIALLY REVERSED. The Appellant's HHS hours shall be adjusted to 3 hours for housework, 3 hours and 30 minutes for laundry, and 2 hours and 30 minutes for shopping. The HHS hours authorized for medication and meal preparation are upheld. The HHS authorization should be retroactive to [REDACTED] and should end [REDACTED]

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

cc:

[REDACTED]

Date Mailed: 4-30-2012

***** 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 must 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.