

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

IN THE MATTER OF:

[REDACTED]

Appellant

Docket No.
Case No.

[REDACTED]

ADMINISTRATIVE LAW JUDGE: Jennifer Isiogu

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following Appellant's request for a hearing.

After due notice, a telephone hearing was held on the above referenced date. The Appellant appeared and testified. Participants on behalf of the Department of Community Health (Department) included [REDACTED], appeals and review officer and [REDACTED] Inzoni, Adult Services Worker.

ISSUE

Did the Department properly terminate the Appellant's Home Help Services?

FINDINGS OF FACT

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

1. The Appellant was a Medicaid beneficiary and a recipient of Home Help Services (HHS).
2. The Appellant is diagnosed with chronic low back pain and COPD.
3. On [REDACTED], the Appellant's Adult Services Worker completed a comprehensive assessment and concluded that the Appellant did not have a medical need for hands on assistance with at least one Activity of Daily Living at a rank of 3 or higher.

4. On [REDACTED], the Department sent the Appellant notice that effective [REDACTED], the Appellant's HHS were terminated because the Appellant had no medical need for hands on assistance with his Activities of Daily Living (ADLs).
5. On [REDACTED], the Michigan Administrative Hearing System received the Appellant's Request for Hearing.

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 of Community Health HHS Medicaid policy is found in the Department of Human Services Adult Services Manual (ASM) at ASM 100- 170. ASM 120, pp. 1-3 provides that HHS policy for comprehensive assessments. ASM 120 provides in pertinent part:

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. This form is primarily used for APS cases.
- Follow rules of confidentiality when home help cases have companion adult protective services 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

Home help payments may only be authorized for needs assessed at the level 3 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.

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[sic] 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.**

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 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.

Responsible
Relatives

Activities of daily living may be approved when the responsible relative is **unavailable** or **unable** to provide these services.

Note: Unavailable means absence from the home for an extended period due to employment, school or other legitimate reasons. The responsible relative must provide a work or school schedule to verify they are unavailable to provide care. **Unable** means the responsible person has disabilities of their own which prevent them from providing care. These disabilities must be documented/verified by a medical professional on the DHS-54A, Medical Needs form.

Legal
Dependent

Do **not** approve shopping, laundry, or light housecleaning, when a responsible relative of the client resides in the home, **unless** they are unavailable or unable to provide these services. Document findings in the general narrative in ASCAP.

Do **not** approve shopping, laundry or light housecleaning, when a legal dependent of the client (minors 15-17) resides in the home, **unless** they are unavailable or unable to provide these services.

**Expanded Home
Help Services
(EHHS)**

Expanded home help services exists if all basic home help services eligibility criteria are met and the assessment indicates the client's needs are so extensive that the cost of care cannot be Met within the monthly maximum payment level of \$549.99

Michigan
Department of
Community
Health Approvals

When the client's cost of care exceeds \$1299.99 for any reason, the adult services specialist must submit a written request for approval to the Michigan Department of Community Health(MDCH).

Follow the **Procedures for Submitting Expanded Home Help Requests** found on the Adult Services Home Page. Submit the request with all required documentation to:

Michigan Department of Community Health
Long Term Care Services Policy Section
Capital Commons Building, 6th Floor
P.O. Box 30479
Lansing, MI 48909

MDCH will provide written documentation (DCH-1785) of approval. A new request **must** be submitted to the Michigan Department of Community Health whenever there is an increase in the cost of care amount. A new request is **not** require[sic] if the cost of care decreases below the approved amount set by MDCH.

Note: If an expanded home help case closes and reopens within 90 days and the care cost remains the same, a new MDCH approval is **not** required.

ASM 120, pp 1-3.

The Department of Human Services issued Interim Policy Bulletin ASB 2011-001 with an effective date of October 1, 2011. This Interim Policy limits HHS eligibility to 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

To qualify for home help services, an individual must require assistance with at least one activity of daily **Criteria** 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 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

**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.

Interim Policy Bulletin Independent Living Services
(ILS) Eligibility Criteria
ASB 2011-001 10-1-2011

On [REDACTED], the Appellant's Adult Services Worker completed a comprehensive assessment and concluded that the Appellant did not have a medical need for hands on assistance with at least one Activity of Daily Living at a rank of 3 or higher. Her

determination was based upon what she was told at the comprehensive assessment and her direct observations. She testified the Appellant told her that she could take care of her own personal needs despite the pain she had and she still required assistance with instrumental activities of daily living. She was also told by the Appellant's daughter that she has never seen the alleged chore provider at the home. The Appellant was residing with her daughter on the date of the assessment. The worker testified she directly observed the Appellant walk downstairs of the home with ease. She did not use any assistive device. She has a 3 wheeled tricycle she rides and is able to put dishes into the dishwasher without assistance. She determined the Appellant had the ability to complete her own personal care needs without physical assistance as a result of her assessment.

The Appellant is contesting the Department's determination that she does not have a medical need for one ADL at a level 3 or higher. The Appellant testified that she has a medical need for the ADLs of bathing, grooming and dressing. She said she cannot wash her own hair, has numbness in her hands which causes her drop things and burn herself when she tries to cook and cannot feed herself at times. She claims she has nerve damage in her hands which causes her need for the physical assistance. She also testified she walked to the store and got locked out her daughter's house and had to find another place to live the same day. She did so. She said the police had to let her in to get her things from her daughter's home. She said she has a 3 wheel tricycle she rides. She said as far as she knew people were getting kicked off the HHS program due to budget cuts.

This ALJ does not have sufficient credible evidence to reverse the Department's determination. The evidence of record from the Appellant appears to be exaggerated, at least in part, because there is no medical documentation to support her claims. The last narrative dating back to ██████████ only indicates she reported some numbness in her fingers sometimes. She reported to the worker at that time the surgery she had ██████████ had helped. All of the sudden, with no new medical information, she reports at hearing she cannot even get food for herself without help. Additionally, she reports inconsistencies such as the inability to dress herself or eat at all without physical assistance, yet walked to the store, and rides a 3 wheeled tricycle. Functional limitations as severe as those reported be supported by medical diagnosis or doctor's statements. Finally, she was contradicted by her own daughter, who informed the worker the provider was not coming to the home. For all these reasons, this ALJ cannot find her testimony credible. The Department's determination must stand in light of the lack of reliable and credible evidence to refute the determinations made by the worker.

Based upon the above Findings of Fact and Conclusions of Law, the Administrative Law Judge concludes that the Department properly determined that the Appellant did not have a medical need for at least one ADL at a rank of 3 or higher and properly terminated the Appellant's HHS. However, the ASW erred by issuing the J ██████████ ██████████ Advance Negative Action Notice with a ██████████ effective date. Adult Services Manual policy specifies that advance notice is to be issued for reductions,

suspensions or terminations and “the effective date of the negative action is ten **business** days after the date the notice is mailed to the client.” (Adult Services Manual (ASM) 150, 11-1-2011, Pages 1-4, emphasis added.) The proposed reduction to the Appellant’s HHS case must be upheld, but it cannot not be effective any earlier than 10 **business** days from the [REDACTED] Advance Negative Action Notice, or [REDACTED] [REDACTED].

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department did act properly. Accordingly, the Department’s Home Help Services decision is AFFIRMED. The effective date of the termination must be AMENDED to [REDACTED] and payment made for dates of provider service between [REDACTED] and [REDACTED].

/S/
Jennifer Isiogu
Administrative Law Judge
For James K. Haveman, Director
Michigan Department of Community Health

Date Mailed: 9/17/12

NOTICE: The Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or reconsideration on the Department’s motion where the final decision 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 date of the rehearing decision.

Appellant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the Appellant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

Request must be submitted through the local DHS office or directly to MAHS by mail at

[REDACTED]

Docket No. 2012-26945 HHS
Decision and Order

Michigan Administrative Hearing System
Reconsideration/Rehearing Request
P. O. Box 30763
Lansing, Michigan 48909

cc:

[REDACTED]