

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

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IN THE MATTER OF:

██████████,

Appellant

Docket No. 2012-26955 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 ██████████ Senior Case Manager, Hope Network New Passages, represented the Appellant. ██████████ the Appellant, appeared and testified. ██████████ Appeals Review Officer, represented the Department. ██████████ Adult Services Worker ("ASW"), appeared as a witness for the Department.

ISSUE

Did the Department properly terminate 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. The Appellant is a Medicaid beneficiary who has been authorized for Home Help Services.
2. The Appellant has been diagnosed with COPD, hypertension, hyperlipidemia, schizophrenia, bipolar, and obesity. ██████████
3. The Appellant has been receiving HHS for assistance with medication, housework, laundry, shopping and meal preparation. ██████████
4. On ██████████ the ASW went to the Appellant's home and completed an in-home assessment for a review of the Appellant's HHS case. ██████████

5. The ASW concluded that the Appellant did not have a medical need for hands on assistance with any Activity of Daily Living (“ADL”). ██████████
██████████
6. On ██████████ the Department sent the Appellant an Advance Action Notice which informed her that effective ██████████, her HHS case would be terminated based on the new policy which requires the need for hands on services with at least one ADL. ██████████
7. The Appellant requires some hands on assistance with at least one ADL, bathing. (Appellant and Case Manager Testimony)
8. On ██████████, the Appellant’s request for hearing was received.
██████████

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 120, 11-1-2011), pages 2-5 of 6 addresses the adult services 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 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 IADLs 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 its 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 Appellant had been authorized for a total of 45 hours and 8 minutes per month for assistance with medication, housework, laundry, shopping and meal preparation with a total monthly care cost of ██████████

On ██████████, the ASW went to the Appellant's home and completed an in-home assessment with the Appellant for a review of her HHS case. The Appellant's provider was not present. The ASW concluded that the Appellant did not have a medical need for hands on assistance with any ADL. ██████████

The Appellant disagrees with the termination. The Appellant's Case Manager credibly testified that the Appellant needs hands on assistance with bathing, specifically getting in/out of the tub and with reaching some parts of her body. The Case Manager explained that she was not present for the ██████████ assessment because she had been on maternity leave, but she was present for the prior assessment in ██████████. The case manager credibly testified that she clearly recalled the ██████████ assessment, during which the Appellant's needs for assistance with bathing were reported to the ASW and there was discussion of getting grab bars and a shower chair for the Appellant. ██████████ The Case Manager's testimony was supported by the ASW's statement that he thought he brought the Appellant a shower

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The Case Manager stated that she did not realize HHS hours were never added for bathing because she never saw the HHS time and task authorization nor does she see the HHS provider logs. ██████████ The Appellant's and Case Manager's testimony also indicated that while there was additional communication with the ASW, it was not specifically about HHS hours for bathing. Rather, there were additional communications involving other issues and the Department's loss of the Appellant's HHS case file. ██████████ The ASW confirmed that the Appellant's HHS case file had been lost prior his office's recent move. ██████████ This may also explain why there is no documentation of the ██████████ review in the general narrative notes. ██████████

The Appellant testified that she needs assistance with ADLs as well as the authorized IADLs. She stated that she uses a seat for bathing, but still needs assistance. The Appellant also indicated a need for assistance with toileting at times, as well as grooming, dressing, and transferring. ██████████ The Case Manager testified she believed the Appellant's chore provider was also providing assistance with ADLs, even if HHS hours for these activities had not been authorized by the Department. ██████████

There was sufficient credible evidence presented to establish that the Appellant needs hands on assistance with at least one ADL, bathing, and that this need was reported to the ASW. There was very little in the notes from the ASW's ██████████ assessment notes to document what was reported at the assessment. ██████████ The Appellant testified she needs assistance with several ADLs. The Case Manager's testimony indicated that the need for assistance with bathing was reported at the ██████████ assessment and she understood that HHS hours were going to be added to the HHS authorization for bathing assistance. The ASW's statement that he brought the Appellant a shower chair also indicates that he had been told that the Appellant had at least some issues with bathing.

Accordingly, the proposed termination of the Appellant's HHS case because she did not require hands on assistance with at least one ADL can not be upheld based on the available information. The credible testimony supports a functional ranking of 3 for bathing; at least until a new assessment of the Appellant's HHS case can be completed. A new assessment would be appropriate given the Appellant's testimony that she needs assistance with multiple ADLs. If a new assessment indicates HHS hours should be added for bathing, and it can be established that the chore provider has been providing assistance with bathing, the HHS authorization for bathing can be made retroactive to ██████████

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department improperly determined that the Appellant is ineligible for HHS and terminated the Appellant's HHS case.

IT IS THEREFORE ORDERED THAT:

The Department's decision is REVERSED. The Appellant's HHS case shall be reinstated retroactive to [REDACTED]. The Appellant's functional ranking for bathing shall be changed to a 3, at least until a new assessment can be completed. If the new assessment indicates HHS hours should be added for bathing and it can be established that the chore provider has been providing assistance with bathing, the HHS authorization for bathing can be made retroactive to [REDACTED].

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

cc:

[REDACTED]

Date Mailed: 4.25.2012

***** 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.