

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

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IN THE MATTER OF:

██████████,

Appellant

Docket No. 2012-27865 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 ██████████, son, represented the Appellant. ██████████, the Appellant, was also present. ██████████, Appeals Review Officer, represented the Department. ██████████, Adult Services Worker ("ASW"), appeared as a witness for the Department.

ISSUE

Did the Department properly reduce the Appellant's Home Help Services ("HHS") authorization?

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 multiple impairments, including hypertension, obesity, hepatitis C, prostate cancer, arrhythmia and carotid stenosis. (Exhibit 1, page 10, Exhibit 2)
3. The Appellant had been receiving 44 hours and 3 minutes of HHS assistance with dressing, toileting, transferring, mobility, bathing, grooming, medication, housework, laundry, shopping, and meal preparation with a total care cost of ██████████ per month. (Exhibit 1, page 13)
4. The Appellant's son is his HHS provider. (Exhibit 1, pages 13-14)

5. On ██████████, the ASW went to the Appellant's home and completed an in-home assessment for an annual review of the Appellant's HHS case. The Appellant's son was also present. It was reported that the Appellant was independent with toileting once he is in the bathroom, could move slowly through his home without assistance, but needed daily assistance to get up off the couch. (ASW Testimony and Exhibit 1, page 8)
6. Based on the available information the ASW concluded that the Appellant's HHS hours for toileting and mobility should be eliminated, and the HHS hours for transferring should be increased. (ASW Testimony, Exhibit 1, page 8)
7. On ██████████, the Department sent the Appellant an Advance Action Notice which informed him that effective ██████████, his HHS case would be reduced to ██████████ per month. (Exhibit 1, pages 5-7)
8. On ██████████, the Appellant's doctor completed a DHS-54A Medical Needs form certifying that the Appellant has a medical need for assistance with bathing, shopping, laundry and housework. (Exhibit 2)
9. 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 120, 11-1-2011), pages 1-5 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 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 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.

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.

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.

Example: Mrs. Smith is in need of home help services. Her spouse is employed and is out of the home Monday thru Friday from 7a.m. to 7p.m. The specialist would not approve hours for shopping, laundry or house cleaning as Mr. Smith is responsible for these tasks.

Example: Mrs. Jones is in need of home help services. Her spouse's employment takes him out of town Monday thru Saturday. The specialist may approve hours for shopping, laundry or house cleaning.

Legal Dependent

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.

*Adult Services Manual (ASM) 120, 11-1-2011,
Pages 1-5 of 6*

Adult Services Manual (ASM 115, 11-1-2011), page 1 of 3 addresses the program requirements, including medical certification:

MEDICAL NEEDS FORM (DHS-54A)

The DHS-54A, Medical Needs form must be signed and dated by a medical professional certifying a medical need for personal care services. The medical professional must be an enrolled Medicaid provider and hold one of the following professional licenses:

- Physician (M.D. or D.O.).
- Nurse practitioner.
- Occupational therapist
- Physical therapist.

Note: A physician assistant (PA) is not an enrolled Medicaid provider and **cannot** sign the DHS-54A.

The medical needs form is only required at the initial opening for SSI recipients and disabled adult children (DAC). All other Medicaid recipients must have a DHS-54A completed at the initial opening and annually thereafter.

The client is responsible for obtaining the medical certification of need but the form must be completed by the medical professional and not the client. The National Provider Identifier (NPI) number must be entered on the form by the medical provider and the medical professional must indicate whether they are a Medicaid enrolled provider.

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.** Needed services are determined by the comprehensive assessment conducted by the adult services specialist.

Certain services are not covered by HHS. ASM 101 provides a listing of the 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.

The Appellant had been receiving 44 hours and 3 minutes of HHS assistance with dressing, toileting, transferring, mobility, bathing, grooming, medication, housework, laundry, shopping, and meal preparation with a total care cost of ██████████ per month. (Exhibit 1, page 13)

On ██████████, the ASW went to the Appellant's home and completed an in-home assessment for an annual review of the Appellant's HHS case. The Appellant's son was also present. It was reported that the Appellant was independent with toileting once he is in the bathroom, could move slowly through his home without assistance, but needed daily assistance to get up off the couch. The ASW provided credible testimony that she asked specific questions regarding the Appellant's abilities to get on/off the toilet, wiping, etc. Based on the available information, the ASW concluded that the

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Appellant's HHS hours for toileting and mobility should be eliminated. (ASW Testimony, Exhibit 1, page 8)

The Appellant disagrees with the reductions. The Appellant's son testimony was not always consistent regarding the Appellant's functional abilities regarding toileting and mobility. Initially he indicated that the Appellant is able to get to and in/out the bathroom and toilet independently, though it is hard for him. However, his later testimony indicated that he helps the Appellant with toileting when the Appellant is dizzy and/or his blood pressure is high. The Appellant's son may help the Appellant to get to the bathroom, then helping him up and back out to the rest of the apartment after letting the Appellant set for a time, and even sometimes holding the Appellant up if he is only going to urinate. The Appellant's son does not live with the Appellant, but he is at the Appellant home for 6 to 8 hours per day, in the afternoon or evening depending on his work schedule. The Appellant's son reported that the doctor is now recommending diapers because the Appellant cannot tell when he needs to use the bathroom, resulting in some incontinence. He noted that the Appellant's apartment is small so the Appellant has to touch the furniture to move around and that they may be able to get a mobility devise if they could get the Appellant into a bigger apartment. The Appellant's son also stated that the Appellant requires assistance to get to doctor appointments. (Son Testimony)

Mobility, as defined for the HHS program, does not include medical transportation. Under the Functional Assessment Definitions and Rankings, mobility is limited to walking or moving around inside the living area, changing locations in a room, assistance with stairs or maneuvering around pets or obstacles, including uneven floors. Adult Services Manual (ASM) 121, 11-1-2011, Page 3 of 4. Additionally, Adult Service Manual (ASM) 101 specifies that transportation to medical appointments is a service not covered under the HHS program. Medical Transportation is separate from the HHS program, and has its own policy. The Appellant may wish to ask his Medicaid eligibility worker about medical transportation assistance.

The ASW's determination to eliminate the HHS hours for toileting and mobility is supported by the information available at the time of the assessment. The ASW asked specific questions regarding toileting, mobility and transfers, and it was only reported that the Appellant needed help transferring up off of the couch. The Appellant was reported to be independent with toileting and mobility, though mobility is slow. The ASW increased the HHS hours for transferring based on the reports that the need for assistance up off the couch is now a daily need. (Exhibit 1, pages 13-14) The information provided at the time of the [REDACTED] assessment indicated that the Appellant is independent with toileting once he is in the bathroom and that he can slowly move through his home. Further, the DHS-54A Medical Needs from completed by the Appellants' doctor on [REDACTED], did not indicate a medical need for assistance with toileting or mobility. (Exhibit 2) Accordingly, the ASW's determination to eliminate the HHS hours for toileting and mobility was supported by the information available at that time.

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However, the ASW erred by issuing the [REDACTED] Advance Negative Action Notice with a [REDACTED] 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 in original.) 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.

The Appellant’s son’s testimony indicates that the Appellant’s condition may have worsened and/or his functional abilities and needs may have changed since [REDACTED]. The Appellant can always request an increase in the HHS authorization and provide documentation of any changes in his condition and/or needs for assistance with activities, including toileting and mobility.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly reduced the Appellant’s HHS authorization based on the information available at the time of the [REDACTED] assessment.

IT IS THEREFORE ORDERED THAT:

The Department’s decision is PARTIALLY AFFIRMED and PARTIALLY REVERSED. The proposed reduction of the Appellant’s HHS case is upheld, but the reduction cannot be effective any earlier than 10 business days from the [REDACTED] Advance Negative Action Notice.

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

cc:

[REDACTED]

Date Mailed: 5/9/2012

***** 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 March 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.