

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

P.O. Box 30763, Lansing, MI 48909
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IN THE MATTER OF:

Docket No. 2012-30731 HHS

██████████

██████████

██████████

Appellant

_____ /

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 ██████████ ██████████ daughter, represented the Appellant. ██████████ the Appellant, was present. ██████████ ██████████ 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 and/or reported knee replacement surgeries in ██████████ osteoporosis, hyperlipidemia, generalized anxiety disorder, carpal tunnel syndrome, chronic stomach disorder, broken left arm in ██████████ 2, lack of vitamin B, glaucoma, hard of hearing on both ears, leg swelling, eczema, fast heart beat, osteoarthritis in spine, history of left knee arthroplasty. (Exhibit 1, pages 9 and 14)
3. The Appellant had only been receiving HHS for assistance with the Instrumental Activities of Daily Living ("IADLs") of housework, laundry, shopping, and meal preparation. (Exhibit 1, page 11)

4. The Appellant's daughter is her HHS provider. (Exhibit 1, pages 10-11)
5. On ██████████, the ASW went to the Appellant's home and completed an in-home assessment for an annual redetermination of the Appellant's HHS case. The Appellant's daughter was present. The ASW went over each of the Activities of Daily Living ("ADLs") and IADLs. It was reported that the Appellant was independent with all ADLs. The ASW understood that the Appellant was able to move slowly through her home independently, but used a cane when walking outside. (ASW Testimony and Exhibit 1, page 9)
6. Based on the available information the ASW concluded that the Appellant did not have a medical need for hands on assistance with any ADL. (ASW Testimony, Exhibit 1, pages 12-13)
7. 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. (Exhibit 1, pages 5-8)
8. 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*

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.

*Adult Services Manual (ASM) 101, 11-1-2011,
Pages 3-4 of 4.*

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The Appellant had been authorized for [REDACTED] of HHS for assistance with the IADLs of housework, laundry, shopping, and meal preparation with a monthly total care cost of [REDACTED] (Exhibit 1, page 11)

On [REDACTED] the ASW went to the Appellant's home and completed an in-home assessment for an annual redetermination of the Appellant's HHS case. The Appellant's daughter was present. The ASW went over each of the ADLs and IADLs. It was reported that the Appellant was independent with all ADLs. The ASW understood that the Appellant was able to move slowly through her home independently, but used a cane when walking outside. (ASW Testimony and Exhibit 1, page 9) Based on the available information, the ASW concluded that the Appellant did not have a medical need for hands on assistance with any ADL. (ASW Testimony, Exhibit 1, pages 12-13)

The Appellant's daughter did not contest that no hands on assistance was being provided with ADLs at the time of the [REDACTED] assessment. She described supervision with bathing and medications as well as hands on assistance with medications, housework, shopping, laundry, and meal preparation. The Appellant's daughter also testified that she takes her mother to doctor appointments both for transportation assistance and due to the language barrier. She also spends a lot of time with her mother, who should be around people because she suffers from depression. However, her testimony indicated changes to the Appellant's condition after the [REDACTED] home visit, including eye surgeries, problems with both feet and the right knee. The Appellant's daughter testified that the Appellant now uses a four prong cane for mobility inside her home and is scheduled for a knee surgery in [REDACTED] which will also result in additional needs for assistance while she recovers. (Daughter Testimony)

The Appellant's daughter credibly testified that she provides assistance to her mother beyond what was authorized for the HHS program. This ALJ does not doubt that the Appellant needs these additional types of assistance. However, the HHS program does not include medical transportation, supervision, and spending time with the Appellant due to depression. The Appellant may wish to ask follow up with her Medicaid eligibility worker about medical transportation assistance.

Mobility, as defined for the HHS program in the Functional Assessment Definitions and Rankings, 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. A ranking of 3 is described as minimal hands on assistance required for specific maneuvers with a wheelchair, negotiating stairs or moving on certain surfaces, without the use of a walker or pronged cane, client would need physical assistance. Adult Services Manual (ASM) 121, 11-1-2011, Page 3 of 4.

The evidence does not establish that the Appellant needed hands on assistance, functional ranking of 3 or greater, with at least one ADL at the time of the February 1, 2012 assessment. The Appellant's daughter's testimony indicated supervision was provided with the ADL of bathing, but this would only change the Appellant's ranking to a level 2 for this activity. The use of the pronged cane for mobility inside her home would support a ranking of 3 for mobility, but this need began

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after the [REDACTED] assessment. Accordingly, the ASW properly applied Adult Services Manual policy and took action to terminate the Appellant's HHS case because the Appellant did not require hands on assistance, functional ranking of 3 or greater, with at least one ADL based on the information available at that time.

As discussed during the hearing proceedings, the Appellant can always reapply for the HHS program and provide current medical documentation of the changes to her condition and her needs for hands on assistance with ADLs and to utilize the pronged cane for mobility inside her home. She may also wish to provide updated information after her knee surgery.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly determined that the Appellant is ineligible for HHS and terminated the Appellant's HHS case based on the information available at the time of the [REDACTED] assessment.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

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

cc:

[REDACTED]

Date Mailed: 5-10-12

***** 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.