

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

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IN THE MATTER OF:

████████████████████

Docket No. 2012-33655 HHS
Case No. ██████████

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 ██████████ the Appellant, appeared and testified. ██████████, appeared as a witness for 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 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 HHS.
2. The Department received medical certification in ██████████ that the Appellant was diagnosed with diabetes, hypertension, coronary artery disease, and status post stroke. ██████████
3. The Appellant has been authorized for HHS for assistance with the Instrumental Activities of Daily Living ("IADLs") of housework, laundry, and shopping and meal preparation. ██████████
4. The policy regarding HHS eligibility changed effective ██████████, adding a new requirement of a need for hands on assistance, functional ranking of 3 or greater, with at least one Activity of Daily Living ("ADL").

Interim Policy Bulletin Independent Living Services (ILS) eligibility criteria ASB 2011-001 10-1-2011.

5. On [REDACTED], the ASW completed a home visit for a review of the Appellant's HHS case. The ASW asked if there had been any changes since the last visit and none were reported. [REDACTED]
[REDACTED]
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.
7. On [REDACTED], the Department sent the Appellant an Advance Action Notice which informed him that effective [REDACTED] his HHS case would be terminated based on the new policy which requires the need for hands on services with at least one ADL. [REDACTED]
[REDACTED]
8. On [REDACTED], the Appellant's request for hearing was received by the Michigan Administrative Hearing System. [REDACTED]
9. The Appellant requires and has been receiving hands on assistance with at least the ADLs of dressing and grooming.

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.

*Adult Services Manual (ASM) 120, 11-1-2011,
Pages 1-4 of 6
(emphasis in original)*

Adult Services Manual (ASM 115, 11-1-2011), pages 1 of 3 also 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.

*Adult Services Manual (ASM) 115, 11-1-2011,
Pages 1 of 3 (emphasis in original)*

The Appellant has been ranked as functional level 1 for all ADLs and the IADL of medication, level 3 for housework and meal preparation, and level 4 for laundry and shopping. [REDACTED] The Appellant had been authorized for HHS for assistance with the IADLs of housework, laundry, and shopping and meal preparation.
[REDACTED]

On [REDACTED], the ASW completed a home visit for a review of the Appellant's HHS case. The ASW testified that he did not get a chance to go through everything in detail because the Appellant was upset about the recent termination notice sent out after the prior home visit appointment could not be completed. The ASW stated he explained the new HHS policy requirement regarding a need for hands on assistance with at least one ADL with the Appellant. The ASW asked if there had been any changes since the last visit and none were reported. The ASW observed the Appellant at the stove preparing food. [REDACTED] Based on the Appellant not requiring assistance previously with any ADL, no medical documentation showing a need for services for any ADL and no verbal report of a need for more services, the ASW concluded that the Appellant did not have a medical need for hands on assistance with any ADL and left the functional rankings unchanged from those assigned by a prior ASW. [REDACTED] Accordingly, the ASW took action to terminate the Appellant's HHS case based on the new policy requirement of a need for hands on assistance, functional ranking of 3 or greater, with at least one ADL to be eligible for ongoing HHS. [REDACTED] The ASW testified he would be willing to extend the effective date to [REDACTED] to comply for the Department's updated policy to provide 10 business days advance

notice rather than 10 calendar days. (See Adult Services Manual (ASM) 150, 11-1-2011, Pages 1-4)

The Appellant disagrees with the termination and testified that the ASW seemed to have made up his mind to terminate the Appellant's HHS case before he even arrived for the home visit. The Appellant noted that the ASW did not show up within the timeframe scheduled for the home visits, which is why the Appellant had left before the ASW arrived for the first attempted home visit and the Appellant's HHS provider was no longer at the home for the [REDACTED] assessment. The Appellant also clarified that he was only eating and had not been cooking when the ASW arrived. Rather his caregiver had already prepared the food and left it on the stove for him. The Appellant's testimony indicated that the ASW talked to him for a bit, but did not ask any questions about specific activities or walk around and look at the Appellant's home. The Appellant described having to hold onto walls for balance when walking around inside his home. He also has a regular style cane. The Appellant did not indicate he received any hands on assistance from anyone with mobility. Regarding dressing, the Appellant requires assistance with putting on shoes, socks, and pants because of problems bending over. Regarding grooming, the Appellant stated he could not trim his own nails because his hands shake. [REDACTED]

The evidence does not indicate that a full and complete comprehensive assessment was completed of the Appellant's HHS case. The ASW's testimony indicated he relied upon the medical documentation, but it is noted that no updated medical verification was requested or received for the [REDACTED] review of the Appellant's HHS case. [REDACTED] The ASW appears to have mostly relied upon a prior ASW's assessment of the Appellant's case, which does not appear to have been reviewed since the initial assessment in [REDACTED]. It appears that the Appellant was upset during the [REDACTED] home visit due to the termination notice that had been issued after an [REDACTED] home visit could not be completed and the ASW arriving after the scheduled time frame a second time. (See [REDACTED]) The ASW testified he tried to explain the new policy to the Appellant, who was upset and testified that he felt the ASW had already made up his mind to terminate the case. While this ALJ understands the ASW did not get into many details because the Appellant was upset, he only asked the Appellant if there had been any changes since the last visit. The ASW failed to discuss or otherwise assess any specific activities with the Appellant before terminating his HHS case based on not having a need for hands on services with at least one ADL. When asked about each of the ADLs, the Appellant testified he requires and has received some hands on assistance with dressing due to problems bending over and grooming due to his hands shaking. The prior ASW's notes for the functional rankings indicate the Appellant had previously reported to the Department that he has left-sided weakness and trouble bending over. [REDACTED] Though there were prior notes regarding hands shaking, it is fair to assume that if the Appellant needs assistance putting on socks and shoes due to problems bending over, he would also need assistance trimming toenails.

There was sufficient credible evidence presented establishing that the Appellant needs and has been receiving hands on assistance with at least the ADLs of dressing and grooming. The Appellant's functional rankings for dressing and grooming shall be changed to a level 3 and HHS hours should be added for these activities as appropriate for a functional ranking of 3.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department did not properly determine that the Appellant is ineligible for HHS and terminated his HHS case based on the available information.

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 rankings for dressing and grooming shall be changed to a level 3 and HHS hours should be added for these activities as appropriate for a functional ranking of 3.

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

cc:

[REDACTED]

Date Mailed: 5-16-2012

***** 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.