

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

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IN THE MATTER OF:

Docket No. 2012-33682 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 ██████████ ██████████ represented herself. Her provider, ██████████ was present and testified on her behalf.

██████████, 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") application?

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 participating in the Home Help Services program.
2. The Appellant is diagnosed with serious mental illnesses (bi-polar and/or schizophrenia) and was struck by a car in ██████████.
3. The Appellant reports lumbar radiculopathy and cervical disc disorder as a result of the automobile accident. She reports neck and back pain.
4. The Appellant takes medication to treat her serious mental illness, Depakote.

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5. The Appellant's medication makes her drowsy.
6. On or about [REDACTED], the ASW assigned to the Appellant's HHS case completed a home call, in conjunction with a review of her HHS case.
7. The ASW observed the Appellant get up and down out of furniture and the floor without assistance.
8. The ASW observed the Appellant demonstrate her physical therapy exercises at the assessment. The Appellant got up and down from the floor to do so.
9. The ASW saw the Appellant go up and down the stairs in her home without assistance at the assessment.
10. The ASW discussed each of the personal care activities listed as Activities of Daily Living with the Appellant.
11. The ASW recalled the Appellant told her she is able to perform her own Activities of Daily Living but needed some help washing her back.
12. The Appellant has a [REDACTED]-year-old daughter who resides with her.
13. As a result of the assessment completed [REDACTED], the ASW determined the Appellant is able to complete her own Activities of Daily Living without physical assistance.
14. On [REDACTED] the Department sent the Appellant an Advance Action Notice which informed her that the HHS payment assistance would be terminated effective [REDACTED]
15. On [REDACTED] 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.

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 for 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 Criteria

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

Example:

A face-to-face review was completed in August 2011; the next scheduled review will be in February 2012. The specialist meets with the client in his/her home for a provider interview in December 2011. Previous assessments indicate the client only needing assistance with instrumental activities of daily living (IADL). A new comprehensive assessment must be completed on this client.

If the assessment determines a need for an ADL at level 3 or greater but these services are **not** paid for by the department, or the client refuses to receive assistance, the client would **continue** to be eligible to receive IADL services.

If the client is receiving only IADLs and does **not** require assistance with at least one ADL, the client no longer meets eligibility for home help services and the case must close after negative action notice is provided.

Each month, beginning with October, 2011, clients with reviews due who only receive IADL services must take priority.

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.

Online Manual Pages

Online manual pages will be updated with the November 2011 policy release.

INTERIM POLICY BULLETIN INDEPENDENT LIVING SERVICES (ILS) ELIGIBILITY CRITERIA ASB 2011-001 10-1-2011

The Department's policy was updated effective November 1, 2011, and states:

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 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.

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

In this case the material issue is whether the Appellant has the ability to perform her own Activities of Daily Living. If she is, she no longer qualifies for payment assistance with Instrumental Activities of Daily Living through the HHS program.

The Department's worker went to her home to complete a functional assessment ██████████, in conjunction with a case review. The Appellant had been participating with the HHS program prior to the assessment. She had been authorized to receive payment assistance for a provider to help with medication administration, meal preparation, laundry, shopping and housework. She had not been receiving assistance with any of the personal care activities designated as the Activities of Daily Living in the Adult Services Manual. The worker provided testimony she discussed each of the personal care activities with the Appellant at the assessment. The worker testified she determined the Appellant was able to complete her own Activities of Daily Living, based upon her direct observations of the Appellant's physical dexterity and their discussion. She further testified although the Appellant asserted she required assistance bathing her back, she determined the Appellant should be able to accomplish the task without assistance with use of a back brush or washcloth.

The Appellant asserts she tried to inform the worker she needed additional services following a car accident she had in ██████████. She asserted she did not get a return call and thereafter spoke with a supervisor, but nothing came of it. She said her provider had to assist her a great deal after her care accident. She stated her provider still does a lot for her because she cannot stay awake all the time and cannot care for her child without help due to her condition and the effects of medication. She stipulated she could perform her own Activities of Daily Living except for washing her back but said she could not after the car accident. She testified she told the worker she was in pain. She testified about the effects of her mental illness and need for help with her child.

The Appellant's provider stated she has assisted the Appellant a great deal and helped with her child. She confirmed the effects of the medication make her drowsy and she has to watch the child for a time after she takes it because she cannot stay awake. Also, if the Appellant does not take her medication she will not tend to her own hygiene needs.

This ALJ considered the evidence presented from each party. The evidence from the Appellant is credible as to her needs and the effects of her medications; however, it is insufficient to establish she requires physical assistance with an Activity of Daily Living as of the time of assessment, in ██████████. The worker's determination is supported by her testimony of direct observations that are material and relevant. The Appellant is able to get up and down off the floor, thus has sufficient dexterity and

strength to perform her own personal care. This ALJ concurs she can wash her back by adapting; i.e. use of washcloth or back brush. This ALJ has sympathy for the circumstances faced by the Appellant, particularly because of the effects of her medication and responsibilities to her young daughter. It is understood the Appellant is used to having assistance with medication administration and is dependant upon it, however, the policy no longer provides for this type of assistance in circumstances such as the Appellant's. The Appellant is encouraged to seek services from the Day Care program and/or Community Mental Health.

The Appellant is currently able to perform her own Activities of Daily Living, thus the Department's decision to terminate her eligibility, based upon the new policy, is correct. The Appellant's assertion she attempted to have services increased was not sufficiently evidenced to be found reliable. The Appellant did not provide reliable evidence of the time frame she needed assistance, or the approximate date(s) she attempted telephone contact with her worker, therefore there is no basis to make a determination of increased eligibility.

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 assistance.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

Jennifer Isiogu
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:



Date Mailed: 5-14-12

*** NOTICE ***

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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.