

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

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IN THE MATTER OF:

██████████,

Appellant

Docket No. 2012-51534 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 ██████████. ██████████, the Appellant, appeared on his own behalf. ██████████, 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 had been authorized for HHS.
2. The Appellant has been diagnosed with hypertension, chronic renal failure, end stage renal disease, coronary artery disease, and cardiomyopathy. (Exhibit 1, page 11)
3. The Appellant had been receiving HHS for assistance with the Instrumental Activities of Daily Living ("IADLs") of housework, laundry, shopping and meal preparation. (Exhibit 1, page 13)
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. The ASW did not go over the Appellant's needs regarding each of the Activities of Daily Living ("ADLs") and IADLs included in the HHS program. (Exhibit 1, page 10 and ASW Testimony)
5. The ASW did not obtain new medical verification prior to making a

determination regarding the Appellant's HHS case. (ASW Testimony)

6. Based on the available information the ASW concluded that the Appellant did not have a need for hands on assistance, functional ranking 3 or greater, with ADLs. (Exhibit 1, pages 10 and 12 and ASW Testimony)
7. On ██████████, the Department sent the Appellant an Advance Action Notice which informed him that effective ██████████ his 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 5-9)
8. On ██████████, the Appellant's request for hearing was received by the Michigan Administrative Hearing System. (Exhibit 1 page 4)
9. The Appellant requires and has been receiving hands on assistance with the ADLs of bathing, toileting, transferring and mobility.

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 cure 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 1-5 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.*

The Appellant had only been authorized HHS for assistance with the IADLs of housework, laundry, shopping and meal preparation. (Exhibit 1, page 13)

On ██████████, the ASW went to the Appellant's home and completed an in-home assessment for a review of the Appellant's HHS case. The ASW did not go over the Appellant's needs regarding each of the ADLs and IADLs included in the HHS program. The ASW understood the Appellant had continuing needs for assistance with the previously authorized IADLs. Ranking justification notes for the Appellant's case indicate the Department was aware the Appellant has dialysis 3 days per week, is very weak, very tired and drained physically. The ASW did not obtain new medical verification prior to making a determination regarding the Appellant's HHS case. (Exhibit 1, page 10 and 12, ASW Testimony) The ASW determined that the Appellant did not need hands on assistance, functional ranking 3 or greater, with at least one ADL. (Exhibit 1, pages 10 and 12, ASW Testimony) Accordingly, the ASW determined that the Appellant's HHS case must be terminated.

The Appellant disagrees with the termination and testified his brother, the enrolled HHS provider, does many things for him that were not on the Department's list, including hands on assistance with ADLs. After dialysis the Appellant is fatigued and may have severe cramping. He lives on the second floor and may need assistance getting upstairs. The Appellant also has some incontinence and may need assistance cleaning himself up as well as cleaning up soiled bedding. At times the Appellant also needs assistance getting out of bed or up from chairs. The Appellant's brother has been continuing to provide assistance, though with some changes in how often and how quickly he can get there when the Appellant calls for help. (Appellant Testimony)

The Department's documentation indicates no updated medical verification has been obtained since ██████████. (Exhibit 1, page 11) The ASW did not obtain new medical verification for this assessment. The ASW did not seem to know if the Appellant receives SSI, which would preclude the requirement for updated medical verification each year for the redetermination. (See Adult Services Manual (ASM) 115, 11-1-2011, Page 1 of 3) Even if the Appellant was an SSI recipient and new medical verification is not required for an annual redetermination, it would have been reasonable request updated medical verification to see if there have been any changes with the Appellant's condition, needs and abilities since ██████████.

Additionally, the ALJ cannot find the ██████████ home visit constituted a complete comprehensive assessment of the Appellant's functional abilities and needs for assistance. While it appears that the Appellant did not report all his needs for assistance during the ██████████ home visit, the ASW acknowledged that he did not discuss each ADL with the Appellant to determine if there were any needs for hands on assistance with these activities. (Appellant and ASW Testimony)

There was sufficient evidence to establish that the Appellant requires hands on assistance, functional level 3 or greater, with the ADLs of bathing, toileting, transferring, and mobility. While these may not be daily needs, the Appellant's testimony indicated they are frequent, and typically occur following dialysis. The Appellant's functional

rankings for bathing, toileting, transferring and mobility should be adjusted to at least level 3 and the termination of the Appellant's HHS case can not be upheld. A new assessment is needed to determine the appropriate ongoing HHS authorization, including the how often the Appellant receives assistance with ADLs.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department improperly terminated the Appellant's HHS authorization based on the available information.

IT IS THEREFORE ORDERED THAT:

The Department's decision is REVERSED. The Appellant's functional rankings for bathing, toileting, transferring and mobility shall be changed to a level 3. The Appellant's HHS case shall be re-instated retroactive to the [REDACTED] effective date. The Appellant's HHS case should be re-assessed to determine the appropriate ongoing HHS authorization, including how often the Appellant receives assistance with ADLs.

/s/ _____
Colleen Lack
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 10/10/2012

***** 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.