

**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:

██████████,

Appellant

Docket No. 2012-68157 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 her own behalf. ██████████, caregiver, 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 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 HHS.
2. The Appellant has been diagnosed with fracture of the left elbow, artificial elbow joint, torn cartilage of both knees, bipolar disorder, anxiety, osteoarthritis, and hypertension. Additional diagnoses of eczema, arthritis, and acid reflux have also been reported. (Exhibit 1, page 16)
3. The Appellant had been receiving HHS for assistance with a total monthly care cost of \$██████████ since ██████████. (Exhibit 2)
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 Appellant was living with her prior HHS provider. (Exhibit 1, page 15)
5. Between ██████████ and ██████████, there were several phone contacts between the Appellant and the ASW regarding a required medical

verification and authorizing the HHS payment. (Exhibit 1, pages 12-15 and 15-16; ASW Testimony)

6. On ██████████, the ASW received the required medical verification and authorized HHS payments for the Appellant. Based on the available information the ASW concluded that the Appellant's HHS authorization should be reduced. The ASW reduced the HHS hours for Instrumental Activities of Daily Living ("IADLs") because the Appellant was living in a shared household. (Exhibit 1, page 11; ASW Testimony)
7. On ██████████, the Department sent the Appellant an Advance Action Notice, which informed her that effective ██████████, the HHS authorization would be reduced to \$ ██████████. (Exhibit 1, pages 5-7)
8. On ██████████ the ASW received a telephone message from the Appellant indicating she had moved around ██████████. The Appellant also stated she had sent the ASW a paper when she moved. (Exhibit 1, page 10)
9. On ██████████, the Department sent the Appellant a Services and Payment Approval notice, which informed her that the HHS authorization would be adjusted to \$ ██████████ effective ██████████ because the Appellant was no longer in a shared living arrangement. (Exhibit 1, pages 8-9)
10. On ██████████, the Appellant's request for hearing was received by the Michigan Administrative Hearing System. (Exhibit 1 page 3)

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) 101, 11-1-11, addresses HHS payments:

Payment Services Home Help

Home help services are non-specialized personal care service activities provided under the independent living

services program to persons who meet eligibility requirements.

Home help services are provided to enable individuals with functional limitation(s), resulting from a medical or physical disability or cognitive impairment to live independently and receive care in the least restrictive, preferred settings.

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

Adult Services Manual (ASM) 105, 11-1-11, addresses HHS eligibility requirements:

Requirements

Home help eligibility requirements include all of the following:

- Medicaid eligibility.
- Certification of medical need.
- Need for service, based on a complete comprehensive assessment (DHS-324) indicating a functional limitation of level 3 or greater for activities of daily living (ADL).
- Appropriate Level of Care (LOC) status.

Necessity For Service

The adult services specialist is responsible for determining the necessity and level of need for home help services based on:

- Client choice.
- A completed DHS-324, Adult Services Comprehensive Assessment. An individual must be assessed with at least one activity of daily living (ADL) 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 IADL's if the assessment determines a need at a level 3 or greater.

- Verification of the client's medical need by a Medicaid enrolled medical professional via the DHS-54A. The client is responsible for obtaining the medical certification of need; see ASM 115, Adult Services Requirements.

*Adult Services Manual (ASM) 105,
11-1-2011, Pages 1-3 of 3*

Adult Services Manual (ASM 120, 5-1-2012), pages 1-4 of 5 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-27, 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 home help services 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.

Home help payments may only be authorized for needs assessed at the 3 level ranking 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 instrumental activities of daily living 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 hours 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.

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 been receiving HHS for assistance with a total monthly care cost of \$██████████ since November 2011. (Exhibit 2)

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 Appellant was living with her prior HHS provider. (Exhibit 1, page 15) Between ██████████ and ██████████, there were several phone contacts between the Appellant and the ASW regarding a required medical verification and authorizing the HHS payment. (Exhibit 1, pages 12-15 and 15-16; ASW Testimony) On ██████████, the ASW received the required medical verification and authorized HHS payments for the Appellant. Based on the available information the ASW concluded that the Appellant's HHS authorization should be reduced. The ASW reduced the HHS hours for IADLs because the Appellant was living in a shared household. (Exhibit 1, page 11; ASW Testimony) On ██████████, the Department sent the Appellant an Advance Action Notice, which informed her that effective ██████████, the HHS authorization would be reduced to \$██████████. (Exhibit 1,

pages 5-7)

On [REDACTED] the ASW received a telephone message from the Appellant indicating she had moved around [REDACTED]. The Appellant also stated she had sent the ASW a paper when she moved. (Exhibit 1, page 10)

The Department asserted that the proposed reduction was rescinded. On [REDACTED], the Department sent the Appellant a Services and Payment Approval notice, which informed her that the HHS authorization would be adjusted to \$ [REDACTED] effective [REDACTED] because the Appellant was no longer in a shared living arrangement. (Exhibit 1, pages 8-9)

As noted by the Appellant, the HHS payment was not reinstated to the previously authorized amount. (Appellant Testimony) The payment authorization confirms that effective [REDACTED], HHS was authorized with a total monthly care cost of \$ [REDACTED] rather than the previously authorized \$ [REDACTED]. (Exhibit 2) The ASW indicated this authorization was based on the assessment and resulting functional rankings. However, the ASW acknowledged that she had not been properly prorating the HHS hours for the IADLs. The ASW had been prorating the RTS suggested times per day by half instead of prorating the monthly maximums. The ASW indicated there should be a bit of an increase in the HHS hours for laundry. (ASW Testimony)

The RTS suggested times for these IADLs are based on an activity being completed seven days per week. It is not unusual for some IADLs activities to be completed less frequently, but in longer time periods than the RTS suggested minutes per day. For example rather than spending 10 minutes on shopping every day, shopping may be completed in longer trips only one or twice per week. If it is the intent of an ASW to authorize the maximums allowed by policy for these IADLs, and less than seven days per week is entered into the computer system, too few HHS hours would be authorized unless the ASW adjusts by increasing the RTS suggested minutes per day to compensate. Similarly, when prorating for shared households, if the activity is completed less than seven days per week, simply reducing the RTS suggested minutes per day by half, without any increase to adjust for the activity being completed less often, can result in incorrectly low HHS authorizations.

The ASW testified she had not been prorating HHS hours for IADLs correctly and was just reducing the RTS suggested minutes per day by half. It appears that in this case, when rescinding the proposed reduction because the Appellant moved in May and was no longer living in shared household, the ASW just put the times for housework, shopping, laundry and meal preparation back to the RTS suggested minutes per day and did not consider adjustment for activities being performed less than seven days per week.

The evidence indicates that the sole basis for the [REDACTED] determination to reduce the Appellant's HHS authorization was the Appellant living in a shared household at the time of the [REDACTED] home visit, and no changes were made to the prior HHS authorization besides prorating the HHS hours for the IADLs of housework, shopping laundry and meal preparation. (Exhibit 1, pages 5-7) Accordingly, if the [REDACTED]

approval notice was truly rescinding the proposed reduction based on the Appellant having moved in [REDACTED] and no longer residing in a shared household, the Appellant's HHS payment should have returned to the previously authorized \$ [REDACTED]. Instead, the [REDACTED] authorization notice and the payment authorization history indicate the Appellant's HHS case was authorized with a total monthly care cost of \$ [REDACTED] effective [REDACTED]. (Exhibit 1, pages 8-9, Exhibit 2) The Department did not present sufficient evidence to explain why the reinstated payment was less. Accordingly, the reduction to the Appellant's HHS authorization can not be upheld.

Additionally, it is noted that a new ASW has been assigned to the Appellant's case and the Department indicated a re-assessment of the Appellant's HHS case would be appropriate. (Adult Services Supervisor Testimony) If they have not already done so, the Department should re-assess the Appellant's HHS case to determine the correct ongoing authorization.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED THAT:

The Department's decision is REVERSED. The Appellant's HHS case shall be reinstated to the previously authorized monthly care cost of \$ [REDACTED] retroactive to the [REDACTED] effective date.

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

[REDACTED]
Docket No. 2012-68157 HHS
Decision and Order

cc:

[REDACTED]

Date Mailed: 1/23/2013

***** 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.