

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

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IN THE MATTER OF:

██████████,

Appellant

Docket No. 2012-53608 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 ██████████. ██████████, caregiver, represented the Appellant. ██████████, the Appellant, was present. ██████████, 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 had been authorized for HHS.
2. The Appellant has been diagnosed with mild mental retardation, obsessive compulsive disorder, irritable bowel syndrome, pituitary gland tumor, bipolar disorder, and dumping syndrome. (Exhibit 1, page 11)
3. The Appellant had been receiving HHS for assistance with the Instrumental Activities of Daily Living ("IADLs") of medication, housework, laundry, shopping and meal preparation. (Exhibit 1, page 14; ASW Testimony)
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 and her caregiver were present. In part, it was reported that bathing assistance is provided with making sure the Appellant does not set

the water temperature too hot. (Exhibit 1, pages 9 and 12; ASW Testimony)

5. 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 any Activity of Daily Living (“ADL”). (Exhibit 1, pages 12-13; ASW Testimony)
6. On ██████████, the Department sent the Appellant an Advance Action Notice, which informed her that effective ██████████ the HHS case would be terminated based on the new policy that requires the need for hands on services with at least one ADL. (Exhibit 1, pages 5-8)
7. On ██████████, the Appellant’s request for hearing was received by the Michigan Administrative Hearing System. (Exhibit 1 page 4)
8. The Appellant’s HHS case has remained open pending this appeal. (ASW Testimony)

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) 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 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.

*Adult Services Manual (ASM) 120, 5-1-2012,
Pages 1-5 of 5*

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 medication, housework, laundry, shopping and meal preparation. (Exhibit 1, page 14; ASW Testimony)

On [REDACTED], 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 and her caregiver were present. In part, it was reported that bathing assistance is provided with making sure the Appellant does not set the water temperature too hot. (Exhibit 1, pages 9 and 12; ASW Testimony) The ASW ranked the Appellant as a level 2 for the ADLs of bathing and toileting, and as a level 1 for grooming, dressing, transferring, eating and mobility. The ASW noted that the provider "must supervise to make sure that client does not make water too hot. Client takes things to extreme due to OCD. But client is able to get in/out and bathe self on own." (Exhibit 1, page 12) The ASW determined that the Appellant's HHS case must be terminated because she did not need hands on assistance, functional ranking 3 or greater, with at least one ADL. (Exhibit 1, page 13; ASW Testimony)

The Appellant disagrees with the termination. The Appellant's caregiver acknowledged she had seen the September 2011 letter and policy bulletin that was issued to HHS

clients about the policy change regarding the new requirement of a need for hands on assistance with at least one ADL to be eligible for HHS. The Appellant's caregiver testified that for the ██████████ home visit, she just went by what was done in the past with other workers. The Appellant's caregiver did not tell the ASW about the assistance the Appellant needs with other bathing and grooming activities, including shaving, combing hair, trimming nails, and washing hair. However, the Appellant's caregiver did bring up with the ASW the need to make sure the Appellant has not set the water temperature too hot for bathing. At the time of the ██████████ home visit, the Appellant's caregiver would check the water temperature with her own hand after the Appellant had set it, then adjust the faucets as needed. The Appellant's condition has worsened and more bathing assistance is now needed. (Caregiver Testimony)

There was sufficient evidence to establish that the Appellant required hands on assistance, functional level 3 or greater, with at least one ADL at the time of the ██████████ assessment. The Appellant's caregiver was providing some hands on assistance with bathing, not just supervision, in making sure the water temperature was not too hot. The Appellant's caregiver credibly testified that she had to use her hand to check the water temperature and adjust the faucets as appropriate. Based on the available information for the assessment, the Appellant should have been ranked as a functional level 3 for bathing and some HHS hours should have been added for the limited hands on assistance that was being provided with bathing. Accordingly, the ██████████ determination to terminate the Appellant's HHS case must be reversed.

The Appellant's caregiver also indicated the Appellant's condition has recently worsened and she requires more assistance. Accordingly, a new assessment should be completed to determine the appropriate ongoing HHS authorization for the Appellant.

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 case based on the available information.

IT IS THEREFORE ORDERED THAT:

The Department's decision is REVERSED. The Appellant's HHS case shall remain open, the Appellant's functional ranking for bathing shall be adjusted to a level 3, and HHS hours for bathing should be added retroactive to the ██████████ effective date as appropriate for the limited hands on assistance with bathing the Appellant was receiving. Further assessment shall be made to determine how often assistance with bathing was being provided.

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

[REDACTED]
Docket No. 2012-53608 HHS
Decision and Order

cc:

[REDACTED]

Date Mailed: 1/10/2013

***** 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.