

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

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IN THE MATTER OF:

██████████

Appellant

_____ /

Docket No. 2012-64552 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 ██████████. ██████████, ACT Program Manager, represented the Appellant. ██████████, the Appellant, was present. ██████████, Appeals Review Officer, represented the Department. ██████████, Adult Services Supervisor, 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 a history of multiple impairments, including schizo-affective disorder, COPD, chronic bronchitis, emphysema, bipolar disorder II-hypomanic, post traumatic stress disorder, dependant personality disorder, borderline personality disorder, diabetes, polydipsia, hypothyroidism, frequent urination and nocturia. (Exhibit 1, page 8; Exhibit 2, page 2)
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, pages 10 and 12)
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's HHS provider was present. The ASW understood that the

Appellant did not require hands on assistance with any Activities of Daily Living (“ADLs”). The Appellant reported being able to complete bathing, though sometimes she is afraid to get in the shower and her provider redirects her. The Appellant also reported being able to complete grooming and dressing herself. (Exhibit 1, pages 9 and 11)

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 ADLs. (Exhibit 1, page 9)
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, page 5)
7. On ██████████, the Appellant’s request for hearing was received by the Michigan Administrative Hearing System.

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 1of 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 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, pages 10 and 12)

[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's HHS provider was present. The ASW understood that the Appellant did not require hands on assistance with any ADLs. The Appellant reported being able to complete bathing, though sometimes she is afraid to get in the shower and her provider redirects her. The Appellant also reported being able to complete grooming and dressing herself. (Exhibit 1, pages 9 and 11) Accordingly, 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, pages 9) The Adult Services Supervisor confirmed that the ASW would not have watched the Appellant perform each task, but would have asked the Appellant and her provider questions about the activities. If the Appellant moved around in the home during the visit, the ASW could have also considered her observations of the Appellant as part of the assessment. (Adult Services Supervisor Testimony)

The Appellant disagrees with the termination. The ACT Program Manager explained the psychiatric side. The ACT Program Manager is concerned that the Appellant would not have provided accurate information during the ASW's home visit. The ACT Program Manager noted that right after the home visit, the Appellant was upset, stated the ASW had gotten very close to her. The Appellant told the ACT program Manager she was just trying to get the ASW out of her home. The Appellant has hallucinations that are auditory, visual and olfactory. The Appellant is also sensitive to light. For months prior to the ██████████ telephone hearing proceedings, the Appellant kept asking if she would be taken to jail. However, the Appellant does not have a Guardian. (ACT Program Manager Testimony)

Over the summer the ACT Program Manager's office had an occupational therapy student as an intern. This student, with supervision, completed an assessment and evaluation of the Appellant addressing functional abilities and needs for assistance with ADLs and IADLs. (ACT Program Manager Testimony; Exhibit 2) The ██████████ Occupational Therapy evaluation and assessment indicates the Appellant had needs for assistance with several ADLs, including bathing and toileting. The safety concerns noted the lack of adaptive equipment like grab bars around the toilet and in shower, an inappropriately sized non-slip mat in the shower and the lack of accessible lighting to access the beside commode. It was also noted that the Appellant's roommate was providing moderate assistance with the ADLs of bathing and dressing. It appears that some of the assistance the Appellant's roommate was providing with ADLs was verbal assistance, such as supervision, prompting, reminding, guiding and encouraging. At least some hands on care with ADLs was documented, including emptying the beside commode and some physical assistance with showering. Regarding dressing, it appears that the Appellant has a hard time but can complete dressing herself to some extent if her roommate is not there by sitting down for this activity. If the roommate is present, he assists with holding the Appellant up for balance with dressing and with figuring out how to put on clothing if it is inside out. (Exhibit 2)

There was sufficient evidence to establish that the Appellant requires hands on assistance, functional level 3 or greater, with at least one ADL. The ASW's determination to terminate the HHS case was reasonable based on the information provided during the ██████████ home visit, particularly as the Appellant does not have a Guardian. However, the ACT Program Manager's testimony explained why the information the Appellant provided to the ASW was not entirely reliable. The ACT Program Manager credibly testified that the Appellant expressed being upset right after the home visit and that she was just trying to get the ASW out of her home. The ASW's notes document that the Appellant's HHS provider was present for the assessment, but it is not clear how much of an opportunity he had to provide input, or if he had an opportunity to speak to the ASW without the Appellant being present if the Appellant was upset for the home visit. Neither the ASW nor the HHS provider were present for the ██████████ telephone hearing proceedings. It is likely that the Appellant's needs for hands on assistance with ADLs were the same at the time of the ASW's assessment in ██████████ as they were for the ██████████ Occupational Therapy evaluation and assessment. The ██████████ Occupational Therapy evaluation and assessment documented some needs for hands on assistance, consistent with a

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functional ranking at level 3, with ADLs of bathing, toileting and dressing. Accordingly, the termination of the Appellant's HHS case can not be upheld.

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 be reinstated retroactive to the [REDACTED] effective date, the Appellant's functional rankings for bathing, toileting, and dressing shall be adjusted to a level 3 and a new assessment is needed to determine the appropriate ongoing HHS authorization.

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

cc:

[REDACTED]

Date Mailed: 1/14/2013

***** 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.