

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

P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 373-4147

IN THE MATTER OF:

██████████,

Appellant

Docket No. 2012-74905 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. ██████████, son, appeared as a witness for the Appellant. ██████████, Appeals Review Officer, represented the Department. ██████████, Adult Services Worker ("ASW"), ██████████, ASW, and ██████████, Adult Services Supervisor, appeared as witnesses for the Department.

ISSUE

Did the Department properly assess 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. On ██████████, the Appellant applied for the HHS program. (Exhibit 1, page 5)
2. The Appellant has been diagnosed with uncontrolled hypertension, chronic anxiety, morbid obesity, status post stroke ██████████, and chronic low back pain. The Appellant also reported COPD, right kidney removed in ██████████, arthritis in legs, hips, and back, hands swelling and closing up, memory problems and balance problems. (Exhibit 1, pages 8 and 10; Exhibit 2)
3. The Appellant's doctor completed a DHS-54A Medical Needs form certifying that the Appellant had a medical need for assistance with bathing, dressing, taking medications, meal preparation, shopping, laundry and housework. (Exhibit 2)

4. On ██████████, ASW ██████ went to the Appellant's home and completed an in-home assessment for a review of the Appellant's HHS case. The Appellant shares her home with her son, who was present for the home visit. The Appellant's son was the proposed HHS provider. The Appellant used a cane when walking. The ASW understood that the Appellant can bathe herself with some help getting in/out of the tub, dress with some assistance, can make small meals, take her own medications, and relies on her daughter to assist with grooming. (Exhibit 1, page 10)
5. On ██████████, ASW ██████ called the Appellant about opening her HHS case, and they discussed how often assistance is provided. The ASW noted bathing, dressing and meal preparation assistance is provided seven days per week, and grooming shopping, laundry and housework assistance is provided once per week. (Exhibit 1, page 9)
6. ASW ██████ determined that the Appellant ranked at a level 3 for bathing, grooming, dressing, housework, shopping, laundry and meal preparation. The ASW authorized a total of 22 hours and 47 minutes per month of HHS for assistance with these activities with a total monthly care cost of \$██████. A ranking at level 2 was also assigned for taking medications. (Exhibit 1, pages 11-12)
7. On ██████████, the Department sent the Appellant a Services and Payment Approval Notice which informed her that she was approved for HHS with a monthly care cost of \$██████ with a start date of December 14, 2011. (Exhibit 1, pages 6-7)
8. On ██████████, the Appellant's request for hearing was received by the Michigan Administrative Hearing System. (Exhibit 1, page 4)

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) 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.

Medical Need Certification

Medical needs are certified utilizing the DHS-54A, Medical Needs form and must be completed by a Medicaid enrolled medical professional. A completed DHS-54A or veterans administration medical forms are acceptable for individual treated by a VA physician; see ASM 115, Adult Services Requirements.

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) 115, 11-1-11, addresses the DHS-54A Medical Needs form:

MEDICAL NEEDS FORM (DHS-54A)

The DHS-54A, Medical Needs form must be signed and dated by a medical professional certifying a medical need for personal care services. The medical professional must be an enrolled Medicaid provider and hold one of the following professional licenses:

- Physician (M.D. or D.O.).
- Nurse practitioner.
- Occupational therapist.
- Physical therapist.

Note: A physician assistant (PA) is not an enrolled Medicaid provider and **cannot** sign the DHS-54A.

The medical needs form is only required at the initial opening for SSI recipients and disabled adult children (DAC). All other Medicaid recipients must have a DHS-54A completed at the initial opening and annually thereafter.

The client is responsible for obtaining the medical certification of need but the medical professional and not the client must complete the form. The National Provider Identifier (NPI) number must be entered on the form by the medical provider and the medical professional must indicate whether they are a Medicaid enrolled provider.

The medical professional certifies that the client's need for service is related to an existing medical condition. **The medical professional does not prescribe or authorize personal care services.** Needed services are determined by the comprehensive assessment conducted by the adult services specialist.

Adult Services Manual (ASM) 120, 5-1-12, addresses the 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 must 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 IADL's 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.

Complex Care Needs

Complex care refers to conditions requiring intervention with special techniques and/or knowledge. These complex care tasks are performed on client's whose diagnoses or conditions require more management. The conditions may also require special treatment and equipment for which specific instructions by a health professional or client may be required in order to perform.

- Eating and feeding.
- Catheters or legs bags.
- Colostomy care.
- Bowel program.
- Suctioning.
- Specialized skin care.
- Range of motion exercises.
- Peritoneal dialysis.
- Wound care.
- Respiratory treatment.
- Ventilators.
- Injections.

When assessing a client with complex care needs, refer to the complex care guidelines on the adult services home page.

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 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, 5-1-2012,
Pages 1-4 of 5

Adult Services Manual (ASM) 101, 11-1-11, addresses 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.

On ██████████, ASW ██████████ went to the Appellant's home and completed an in-home assessment for a review of the Appellant's HHS case. The Appellant shares her home with her son, who was present for the home visit. The Appellant's son was the proposed HHS provider. The Appellant used a cane when walking. The ASW understood that the Appellant can bathe herself with some help getting in/out of the tub, dress with some assistance, can make small meals, take her own medications, and relies on her daughter to assist with grooming. (Exhibit 1, page 10) ASW ██████████ determined that the Appellant ranked at level 3 for bathing, grooming, dressing, housework, shopping, laundry and meal preparation. The ASW authorized a total of 22 hours and 47 minutes per month of HHS for assistance with these activities with a total monthly care cost of \$██████████. A ranking at level 2 was also assigned for taking medications. (Exhibit 1, pages 11-12)

The Appellant disagrees with the amount of HHS hours authorized. (Appellant Testimony)

Bathing

The Appellant was ranked as a functional level 3 and authorized 8 minutes 7 days per week (4 hours and 1 minute per month) of HHS hours for bathing. (Exhibits 1, pages 11-12) The ASW understood that the Appellant only requires assistance getting in/out of the tub. (Exhibit 1, page 10)

The Appellant did not provide any evidence indicating her son spends more time her with bathing than was authorized. The ranking and level 3 and HHS authorization are consistent with assistance only being provided with getting in/out of the tub. Accordingly, the HHS authorization for bathing is upheld.

Grooming

The Appellant was ranked as a functional level 3 and authorized 8 minutes 1 day per week (34 minutes per month) of HHS hours for grooming. (Exhibits 1, pages 11-12) It appears this was based the ASW's understanding that the Appellant mostly relies on her daughter for grooming assistance. The Appellant's son is her HHS provider. (Exhibit 1, page 10; ASW ██████████ Testimony)

The Appellant testified her daughter is a beautician and keeps her in a very nice looking way. The Appellant's testimony indicates her son tries to assist with grooming to some extent, but most of the grooming assistance is provided by her daughter. (Appellant Testimony)

The evidence supports the ranking and level 3 and HHS authorization for grooming. HHS hours can not be authorized for assistance provided by someone who has not been enrolled as an HHS provider. The Appellant's son, the enrolled HHS provider, provides some grooming assistance, but the evidence indicates the Appellant's

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daughter provides most of the grooming assistance. Accordingly, the HHS authorization for grooming is upheld.

Dressing

The Appellant was ranked as a functional level 3 and authorized 7 minutes 7 days per week (3 hours and 31 minutes per month) of HHS hours for dressing. (Exhibits 1, pages 11-12) The ASW understood that the Appellant only requires some assistance with dressing. (Exhibit 1, page 10)

The Appellant did not provide any evidence indicating her son spends more time her with dressing than was authorized. The ranking and level 3 and HHS authorization are consistent with only some assistance being provided with dressing. Accordingly, the HHS authorization for dressing is upheld.

Mobility

The ASW ranked the Appellant as a level 1 for mobility and noted she walked with a cane during the home visit. No HHS hours were authorized for mobility assistance. (Exhibit 1, pages 10-11)

The Appellant testified her stability is off from her stroke. The Appellant stated her son helps her down the steps and out the front door. However, the Appellant also acknowledged that there was no fault with the assessment and there were some things the ASW did not know. (Appellant Testimony)

The need to utilize a pronged cane or walker would support a ranking at level 3, but would not itself allow for an authorization of HHS hours. (See Pages 3-4 of 4 and Adult Services Manual (ASM) 121, 11-1-2011, Pages 3-4 of 4)

The Appellant's testimony indicates there may be a limited need for some hands on assistance from her son with mobility. However, there was insufficient evidence this need was reported during the home visit. Further, the Appellant's doctor did not indicate a need for assistance with mobility on the DHS-54A Medical Needs form. (Exhibit 2) The determination not to authorize HHS hours for mobility based on initial assessment is upheld.

The Appellant may wish to provide the Department with updated medical verification of her functional abilities and needs for assistance to support a request to add HHS hours for mobility to her HHS authorization.

Medications

The ASW ranked the Appellant as a level 2 for medications based on her understanding that the Appellant takes her own medications. No HHS hours were authorized for medication assistance. (Exhibit 1, pages 10-11)

The Appellant's testimony indicates she has some forgetfulness regarding her

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medications and her son makes sure she takes them. (Appellant Testimony) Supervision, reminders and prompting are considered a functional ranking at level 2 and do not allow for HHS payment. The determination not to authorize HHS hours for medications is upheld.

Housework, Shopping, Laundry and Meal Preparation

The policy implemented by the Department recognizes that in most cases, certain tasks are performed that benefit all members who reside in the home together, such as cleaning, laundry, shopping and meal preparation. Normally, it is appropriate to pro-rate the payment for those tasks in a shared household, as the other household members would still have to clean their own home, make meals, shop and do laundry for themselves if they did not reside with the Appellant. The HHS program will not compensate for tasks that benefit other members of a shared household. Accordingly, the authorized hours for these activities must be prorated under Department policy. Exceptions can be made when there is justification for performing an activity separately, such as incontinence.

Department policy allows for a maximum of 6 hours per month for housework, 5 hours per month for shopping, 7 hours per month for laundry and 25 hours per month for meal preparation. The Appellant lives with her son/HHS provider. (Exhibit 1, page 10) The Appellant was ranked as a level 3 for housework, laundry shopping and meal preparation. (Exhibit 1, page 12) After proration for the shared household, ASW ██████████ authorized 6 minutes once per week (26 minutes per month) for housework, 14 minutes once per week (1 hour per month) for laundry, 10 minutes once per week (43 minutes) per month for shopping, and 25 minutes seven days per week (12 hours and 32 minutes per month) for meal preparation. (Exhibit 1, page 11)

The Appellant's testimony indicates her son provides more assistance than was authorized for these activities. For example, the Appellant has a weak bladder and has some accidents, resulting in additional laundry. The Appellant's laundry is done twice per week, sometimes more often. (Appellant Testimony) The Appellant's son indicated the Appellant eats different meals because she has hypertension, shopping trips take about 30 minutes and laundry is done separately for the Appellant. (Son Testimony)

ASW ██████████ correctly considered proration of the HHS hours for these IADLs because the Appellant lives in a shared household. The Appellant and her son provided some evidence regarding completing laundry and meal preparation separately for the Appellant. The Appellant's credible testimony indicated she has some incontinence. Incontinence supports exempting the HHS hours for laundry from the proration policy. While the Appellant's son indicated meals are prepared separately, there is insufficient evidence of a specialized diet to support exempting meal preparation from proration. A diet for hypertension could be relatively simple, like limiting the salt added to foods, and would not necessarily require separate meals to be prepared for the Appellant. Documentation of the Appellant's hypertension diet would be needed to establish a specialized diet requiring separate meal preparation. The Appellant may wish to provide additional documentation of a specialized diet for consideration in her ongoing

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HHS authorization.

ASW [REDACTED] authorized half of the monthly maximum that policy allows for meal preparation, which is consistent with the Appellant's household composition and needs for assistance, absent further documentation of a specialized diet. The HHS authorization for meal preparation is upheld based on the available information. However, the HHS authorizations for housework, laundry and shopping are well below half of the maximums allowed by policy and are not sufficient to meet the Appellant's needs with these activities. The Appellant provided sufficient evidence to support increasing the HHS authorizations to 3 hours per month for housework, 2 hours and 30 minutes per month for shopping, and 7 hours per month for laundry.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department improperly assessed and authorized HHS payments in the areas of housework, shopping and laundry based on the available information.

IT IS THEREFORE ORDERED THAT:

The Department's decision is PARTIALLY AFFIRMED and PARTIALLY REVERSED. The Department's determinations regarding bathing, grooming, dressing, mobility and medications are upheld. Retroactive to the December 14, 2011 effective date, the Appellant's HHS hours shall be adjusted to:

- 3 hours per month for housework
- 2 hours and 30 minutes per month for shopping
- 7 hours per month for laundry

LSI

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

cc:

[REDACTED]

Date Mailed: 2/11/2013

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***** 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.