

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

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IN THE MATTER OF:

██████████,

Appellant

Docket No. 2013-22329 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 ██████████ ██████████, niece, represented the Appellant. ██████████ sister, appeared as a witness for the Appellant. ██████████, Appeals Review Officer, represented the Department. ██████████ Samples, 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 had been authorized for HHS.
2. The Appellant has been diagnosed with HIV, schizophrenia, liver disease, hepatitis C, right hip/leg pain, dilated cardiomyopathy, kidney stones, congestive heart failure, hypertension, and alcoholic history. (Exhibit 1, pages 8 and 14)
3. The Appellant had been receiving a total of 76 hours and 14 minutes of HHS for assistance with bathing, grooming, dressing, transferring, eating, mobility, medication, housework, laundry, shopping, and meal preparation with a monthly care cost of ██████████. (Exhibit 1, pages 13 and 15)
4. The Appellant's nephew is her enrolled HHS provider. (Exhibit 1, page 13; Niece Testimony)

5. On ██████████, the Appellant's doctor completed a DHS-54A Medical Needs form, but only indicated needs for assistance with taking medications, meal preparation, shopping, laundry and housework. (Exhibit 1, page 14)
6. 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, the provider, and the Appellant's sister were present. The ASW went over Activities of Daily Living ("ADLs") and Instrumental Activities of Daily Living ("IADLs") included in the HHS program with the Appellant and the provider. The ASW also observed the Appellant walking and transferring without assistance as well as using her hands. (Exhibit 1, pages 10-11; ASW Testimony)
7. While the ASW was on a leave, the Adult Services Supervisor determined that the Appellant's HHS authorization should be reduced based on the available information. The Appellant's HHS hours for bathing and dressing were reduced and the HHS hours for mobility, eating and transferring were eliminated. This resulted in an overall reduction to the Appellant's HHS authorization to a total of 36 hours and 37 minutes with a monthly care cost of ██████████. (Exhibit 1, pages 11-13)
8. On ██████████ the Department sent the Appellant an Advance Action Notice, which informed her that effective ██████████ the HHS case, would be reduced to ██████████. (Exhibit 1, pages 5-8)
9. 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) 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 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. 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: ██████████ is assessed at a level 4 for bathing however she refuses to receive assistance. ██████████ 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) 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) 115,
11-1-2011, Pages 1-3 of 3*

Adult Services Manual (ASM 120, 5-1-2012), 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: [REDACTED] is assessed at a level 4 for bathing however she refuses to receive assistance. [REDACTED] 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.

The Appellant had been receiving a total of 76 hours and 14 minutes of HHS for assistance with bathing, grooming, dressing, transferring, eating, mobility, medication, housework, laundry, shopping, and meal preparation with a monthly care cost of [REDACTED] (Exhibit 1, pages 13 and 15)

On [REDACTED], the Appellant's doctor completed a DHS-54A Medical Needs form, but only indicated needs for assistance with taking medications, meal preparation, shopping, laundry and housework. (Exhibit 1, page 14)

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, the provider, and the Appellant's sister were present. The ASW observed the Appellant walking and transferring without assistance as well as using her hands. The ASW went

over ADLs and IADLs included in the HHS program with the Appellant and the provider. The Appellant reported that she can feed herself, including cutting food. The Appellant's sister assists the Appellant with some activities, such as dressing if her shirt gets stuck while putting it on or with getting soap out of the Appellant's hair. The provider helps the Appellant with getting in/out of the tub on occasion, washing hair, and transportation. It was also reported that the Appellant can complete all tasks on her own, but sometimes she does not want to be bothered and prefers to stay in bed. At those times the Appellant receives help. For example, the Appellant may not want to walk even though there is nothing preventing her from doing so. During the home visit, needs for assistance were reported with almost everything. However, these reports did not match the ASW's observations of the Appellant during the home visit. The ASW planned on closing the Appellant's HHS case based on the ██████████ medical certification and the home visit assessment. (Exhibit 1, pages 10-11; ASW Testimony)

However, the ASW went out on a leave before any action was taken on the Appellant's HHS case. While the ASW was on a leave, the Adult Services Supervisor determined that the Appellant's HHS authorization should be reduced based on the available information from the ASW's assessment note. The Appellant's HHS hours for bathing and dressing were reduced and the HHS hours for mobility, eating and transferring were eliminated. This resulted in an overall reduction to the Appellant's HHS authorization to a total of 36 hours and 37 minutes with a monthly care cost of ██████████ (Exhibit 1, pages 11-13; ASW Testimony)

The Appellant disagrees with the reduction to her HHS authorization. The Appellant's niece testified that the Appellant has been receiving assistance for several years and her condition has gotten worse, not better. The Appellant has arthritis in her hip and knee limiting her ability to move around. The Appellant also has an enlarged heart, congestive heart failure and COPD. The Appellant gets shortness of breath with daily activities, such as getting to the bathroom or dressing. The Appellant has many conditions causing issues and needs a lot of assistance. The Appellant's niece was not present for the ASW's home visit. The Appellant's niece acknowledged that the Appellant would have told the ASW she could do things, but explained that the Appellant is in denial regarding what she really can do. (Niece Testimony)

The Appellant's niece's testimony indicated there is a ██████████ status report and that there have been some recent declines in the Appellant's condition and abilities. (Niece Testimony) As noted during the hearing proceedings, the ██████████ status report can be considered by the Department for determining the appropriate current and ongoing HHS authorization, but is too recent to be considered regarding the Appellant's functional abilities and needs for assistance at the time of the ██████████ assessment.

The Department provided sufficient evidence to support the elimination of HHS hours for mobility, transferring and eating as well as the reductions to the HHS hours for bathing and dressing based on the information available at that time. The ASW's narrative note and credible testimony document what was reported during the home visit and her observations of the Appellant. As indicated in the above cited policy, the HHS program

only includes certain activities. Further, HHS payments can only be authorized for hands on assistance provided by an enrolled HHS provider. (See also Adult Services Manual (ASM) 140, 11-1-2011) Accordingly, the HHS authorization can not cover all of the assistance the Appellant has been receiving, such as transportation to medical appointments or assistance provided by her sister, who is not an enrolled HHS provider for the Appellant. The HHS program also can not compensate for assistance that is a functional ranking at level 2, such as prompting, supervising, or motivating on days the Appellant would rather stay in bed. The [REDACTED] DHS-54A Medical Needs form supports a determination that the Appellant does not have a need for hands on assistance with many ADLs in the HHS program. The Appellant's doctor only indicated needs for assistance with the IADLs of taking medications, housework, shopping, laundry and meal preparation and did not indicate needs for assistance with any ADLs. (Exhibit 1, page 14) The ASW's narrative notes and credible testimony document that the Appellant was observed walking and transferring without assistance as well as using her hands. The Appellant also reported being able to feed herself. Only minimal assistance from the enrolled HHS provider with bathing and dressing were reported. Further, information was reported by the provider and the Appellant's sister, not just the Appellant. (Exhibit 1, pages 10-11; ASW Testimony) The evidence supports the elimination of HHS hours for mobility, transferring and eating as well as the reductions to the HHS hours for bathing and dressing based on the information available to the ASW at that time. The reduction to the Appellant's HHS authorization is upheld.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

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

cc:

[REDACTED]

Date Mailed: April 12, 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.