

**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:

Docket No. 2013-27223 HHS

██████████

██████████

Appellant

_____ /

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, and ██████████, friend, appeared and testified. ██████████ also provided translation. ██████████, Appeals Review Officer, represented the Department. ██████████, Adult Services Worker ("ASW"), ██████████ Adult Services Supervisor, appeared as witnesses for the Department. The record was left open for the Department to submit additional documentation, which was received.

ISSUE

Did the Department properly deny the Appellant's Home Help Services ("HHS") application?

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 or about ██████████, the Appellant applied for the HHS program. (Exhibit 1, page 5)
2. On ██████████, the ASW made a visit to the Appellant's home for an initial assessment. The ASW confirmed that the Appellant is married. A DHS-54A Medical Needs form was left for the Appellant's wife to take to her doctor. (Exhibit 1, page 16 and ASW Testimony)




3. Department policy states that HHS may not be authorized for services that a responsible relative, such as a spouse, is able and available to provide. (Adult Services Manual (ASM) 120, 5-1-2011, Pages 4-5 of 5)
4. Department policy also requires a need for hands on assistance with at least one Activity of Daily Living (“ADL”) to be eligible to receive HHS. An individual that only had needs for hands on assistance with Instrumental Activities of Daily Living (“IADLs”) would not be eligible for HHS. (Adult Services Manual (ASM) 105, 11-1-2011, Page 2 of 3 and Adult Services Manual (ASM) 120, 5-1-2011, Page 4 of 5)
5. The ASW ranked the Appellant as: a functional level 3 with three ADLs, bathing, dressing, and mobility; and a functional level 5 for he IADLs of housework, laundry, shipping, and meal preparation. (Exhibit 1, page 15)
6. On [REDACTED], the Department sent an Adequate Negative Action Notice to the Appellant indicating that his HHS application would be denied on [REDACTED] if the medical form that needs to be filled out by the Appellant’s wife’s doctor is not completed stating the medical reason she cannot care for the Appellant’s needs. (Exhibit 1, pages 5-9)
7. On [REDACTED], the Appellant’s wife’s doctor completed a DHS-54A Medical Needs form documenting diagnoses of right shoulder and neck pain as well as hypertension. The doctor indicated the Appellant’s wife had a medical need for assistance with meal preparation, shopping, laundry and housework. The doctor also indicated she was not able to work, likely for her lifetime. (Exhibit 1, page 17)
8. On [REDACTED], the Department sent an Adequate Negative Action Notice to the Appellant indicating that his HHS application was denied because a responsible relative (wife) is in the home and she is able to care for the Appellant. (Exhibit 1, pages 10-13)
9. On [REDACTED], 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 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 1-5 of 5 addresses the adult services comprehensive assessment and responsible relatives:

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.

Responsible Relatives

Activities of daily living may be approved when the responsible relative is **unavailable** or **unable** to provide these services.

Note: Unavailable means absence from the home for an extended period due to employment, school or other legitimate reasons. The responsible relative must provide a work or school schedule to verify they are unavailable to provide care. **Unable** means the responsible person has disabilities of their own which prevent them from providing care. These disabilities must be documented/verified by a medical professional on the DHS-54A, Medical Needs form.

Do **not** approve shopping, laundry, or light housecleaning, when a responsible relative of the client resides in the home, **unless** they are unavailable or unable to provide these services. Document findings in the general narrative in ASCAP.

Example: Mrs. Smith is in need of home help services. Her spouse is employed and is out of the home Monday thru Friday from 7a.m. to 7p.m. The specialist would not approve hours for shopping, laundry or house cleaning as Mr. Smith is responsible for these tasks.

[REDACTED]

Example: Mrs. Jones is in need of home help services. Her spouse's employment takes him out of town Monday thru Saturday. The specialist may approve hours for shopping, laundry or house cleaning.

*Adult Services Manual (ASM) 120, 5-1-2012,
Pages 1-54 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 applied for HHS on or about [REDACTED] (Exhibit 1, page 5) On [REDACTED] the ASW made a visit to the Appellant's home for an initial assessment. The Appellant, his wife and a nephew were present. The ASW confirmed that the Appellant is married. A DHS-54A Medical Needs form was left for the Appellant's wife to take to her doctor. (Exhibit 1, page 16 and ASW Testimony)

[REDACTED]


On [REDACTED] the Appellant's wife's doctor completed a DHS-54A Medical Needs form documenting diagnoses of right shoulder and neck pain as well as hypertension. The doctor indicated the Appellant's wife had a medical need for assistance with meal preparation, shopping, laundry and housework. The doctor also indicated she was not able to work, likely for her lifetime. (Exhibit 1, page 17) The ASW testified that during the [REDACTED] home visit, the Appellant reported his wife does not take care of him. The ASW understood that the Appellant's wife is normally home but does not have time to care for the Appellant because she is busy caring for their children. The ASW thought the Appellant's children were ages 10 and 13. (Exhibit 1, page 16 and ASW Testimony) Further, because the medical verification form completed by the Appellant's wife's doctor only indicated the Appellant's wife had a medical need for assistance with IADLs and did not indicate that she needed assistance to complete any of the listed ADLs for herself, the ASW inferred that the Appellant's wife was also able to care for the Appellant with his needs for ADL assistance. Based on the available information, the ASW determined the Appellant's HHS application must be denied. (ASW Testimony)

The Appellant disagrees with denial, and testified that he has two daughters, ages 13 and 16. The Appellant indicated there may have been a misunderstanding about his wife caring for the children. The Appellant's wife may help them a little bit, but they are almost grown and almost take care for themselves. The Appellant stated that his wife is [REDACTED] years old and is receiving medical care for shoulder and neck pain. The insurance covers medications, but does not cover physical therapy. The Appellant's wife only takes care of herself, and does not help the Appellant. The Appellant testified he needs help with walking in the home, described as having someone by him and giving him a hand to take to get to the bathroom, bedroom or dining room. The Appellant also needs help with shaving, showering, giving him medicine, and changing clothes. (Appellant Testimony)

The ASW properly considered the availability and ability of the Appellant's wife to provide care for the Appellant. The Adult Services Glossary defines a responsible relative as a person's spouse or a parent of an unmarried child under age 18. Adult Services Glossary (ASG) Glossary 12-1-2007, Page 5 of 6. The Appellant's wife meets the definition of a responsible relative. Under Department policy, HHS for the Appellant could only be authorized for those services or times which the responsible relative is unavailable or unable to provide.

The Department policy requires documentation on a DHS-54A Medical Needs form that the responsible person has disabilities of their own that prevent them from providing care. It is noted also that section L of the DHS-54A Medical Need form asks the medical provider of the HHS applicant/recipient whether the spouse or parent is needed


in the home to provide care. However, section L does not ask that medical provider to document any impairment(s) the spouse/parent has nor to indicate if they also are a treating provider the responsible relative of the HHS applicant/recipient. (See DHS-54A as revised 10-08) Accordingly, it is understandable that a separate form would need to



be completed by the responsible relative's medical provider when the HHS applicant/recipient and their responsible relative are treated by separate medical providers. Further, in this case, sections J, K, and L of the DHS-54A completed by the Appellant's doctor are not legible, despite a second effort to fax the form to this ALJ. (Exhibit 2)

Based on the policy requirement, the ASW properly requested a DHS-54A Medical Needs form from the Appellant's wife's doctor, particularly as this is not the same doctor that treats the Appellant. (Exhibit 1, page 17, Exhibit 2) However, the DHS-54 A Medical Needs form, as written does not clearly ask a doctor to address their patient's ability to care for their spouse. Section I of the form, which the ASW relied up on this case, only asks the medical provider to address whether or not their patient has a medical need for assistance with the listed personal care activities. Depending upon the impairment, an individual may be able to care for their own ADLs but may not be able to assist a spouse with ADLs. For example in this case, the Appellant's wife's doctor a documented diagnoses of right shoulder and neck pain, and only indicated she had a medical need for assistance with the IADLs of housework, laundry, shopping and meal preparation. (Exhibit 1, page 17) Depending on the nature of the shoulder/neck impairment the Appellant's spouse has, it is possible that while she may not need assistance with completing her own ADLs, she would not be able to provide hands on assistance to the Appellant with balancing or weight bearing when walking form room to room in the home or with getting in and out of a shower/tub. Further, other sections of the DHS-54A Medical Needs form give some indication of the severity of the Appellant's wife's impairment. In sections D and E of her DHS-54A Medical Needs form, it is documented that the Appellant's wife has office or clinic visits twice per month and treatment is expected to last for lifetime. In section J of the DHS-54A Medical Needs form, the Appellant's wife's doctor indicated she was not able to work at her usual occupation or any job "likely lifetime difficult to predict." (Exhibit 1, page 17)

The evidence in this case is not sufficient to support the Department's determination to deny the Appellant's HHS application because his spouse is in the home and able to care for him. This ALJ understands that the Department policy requires the Appellant to have a need for hands on assistance, functional ranking 3 or greater, with at least one ADL to be eligible for HHS. The ASW's functional ranking justification notes indicate she determined the Appellant needs bathing assistance with getting in/out of the tub; dressing assistance with putting on pants, tying shoes and fastening/unfastening; mobility assistance with going up and down stairs; and IADL assistance with housework, shopping, laundry and meal preparation. The ASW ranked the Appellant as a functional ranking level 3 with three ADLs, bathing, dressing, and mobility. (Exhibit 1, page 15) The Department would not authorize HHS for any assistance the Appellant's wife can provide, but with functional rankings at level 3 for three ADLs, the Appellant is eligible for HHS for IADLs and any ADLs his wife is unable to assist him with. The policy specifically states:



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.

Adult Services Manual (ASM) 105,
11-1-2011, Page 2 of 3

Accordingly, the policy would allow for an HHS authorization of IADLs only as long as (1) the Appellant has needs for assistance with at least one ADL at functional ranking level 3 or greater, even if these services are not paid for by the Department because his wife could provide the ADL assistance, and (2) the Appellant's spouse is unavailable or unable to provide the IADL assistance. The ASW ranked the Appellant at functional level 3 for three ADLs, bathing, dressing, and mobility. (Exhibit 1, page 15) The DHS-54A Medical Needs form completed by the Appellant's wife's doctor documents her impairments and indicates she has a medical need for assistance with the IADLs of housework, shopping, laundry, and meal preparation. (Exhibit 1, page 17) Accordingly, the Appellant would be eligible for HHS with at least these IADLs, prorated for the shared household, unless there is significant contrary evidence that the Appellant's wife is able to provide the needed assistance with these activities.

Further, is not clear that just because the Appellant's wife does not need assistance to complete her own ADLs that she is able to provide all of the ADL care the Appellant needs. As discussed above, the DHS-54A Medical Needs form did not ask the Appellant's wife's doctor to address her ability to care for the Appellant. The diagnosis information provided was rather vague, no cause of the Appellant's wife's right shoulder or neck pain was documented. However, other sections of this form indicate this is a significant impairment requiring office or clinic visits twice per month, treatment is expected to last for lifetime and she is not able to work likely for her lifetime. (Exhibit 1, page 17)

Additional information is needed to determine if HHS hours should be authorized for ADLs for the Appellant. It appears that there may have been some misunderstandings during the ASW's home visit. A language barrier was evident in the Appellant's need for translation during the telephone hearing proceedings and was documented by the Appellant's wife's doctor on her DHS-54A Medical Needs form. (Exhibit 1, page 17) Further, a new DHS-54A Medical Needs form or other verification from the Appellant's wife's doctor with more information would be helpful, if it can be obtained. The Department should reassess the Appellant's wife's ability to assist the Appellant to determine the appropriate HHS authorization.

