

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

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IN THE MATTER OF:

██████████

Appellant

_____ /

Docket No. 2013-29407 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 April 16, 2013. ██████████ sister and Guardian, represented the Appellant. ██████████ the Appellant, was present. ██████████, Appeals Review Officer, represented the Department. ██████████ Adult Services Worker ("ASW"), 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 been diagnosed with closed head injury, glaucoma, hypertension, chronic kidney disease and schizophrenia. (Exhibit 1, page 15)
3. The Appellant had been receiving HHS for assistance with the Activities of Daily Living ("ADLs") of bathing, grooming and dressing as well as the Instrumental Activities of Daily Living ("IADLs") of medication, housework, laundry, shopping and meal preparation. The Appellant's sister is the HHS provider. (Exhibit 1, page 17; ASW Testimony)

[REDACTED]

4. 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 his sister were present. The ASW understood that the Appellant only needed supervision and prompting to complete ADLs. The ASW further understood that the Appellant's sister had been leaving the state frequently to care for another relative, leaving the Appellant home for a few weeks at a time, during which neighbors checked on him. (Exhibit 1, pages 12 and 16; 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 ADLs. (Exhibit 1, page 16)
6. On [REDACTED], the Department sent the Appellant an Advance Action Notice, which informed him that effective [REDACTED] 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 8-11)
7. On [REDACTED], the request for hearing filed on the Appellant's behalf was received by the Michigan Administrative Hearing System. (Exhibit 1, pages 3-5)
8. The Appellant requires hands on assistance with some aspects of bathing and grooming. (Sister 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) 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.

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- 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 1-4 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.

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- 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.*

[REDACTED]

The Appellant had been receiving HHS for assistance with the ADLs of bathing, grooming and dressing as well as the IADLs of medication, housework, laundry, shopping and meal preparation. The Appellant's sister is HHS provider. (Exhibit 1, page 17; 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 his sister were present. The ASW understood that the Appellant only needed supervision and prompting to complete ADLs. For example, regarding bathing, no hands on assistance was provided for the Appellant, there was some discomfort with the Appellant being seen undressed and physically the Appellant can wash himself. Regarding grooming, prompting is provided with these tasks, but the Appellant can complete the tasks, such as brushing his teeth, without hands on assistance. Regarding dressing, some assistance may be provided to pick out appropriate clothing, but the ASW understood that no hands on assistance is provided. It was the same regarding the other ADLs, prompting and supervision but no needs for hands on assistance. The ASW further understood that the Appellant's sister had been leaving the state frequently to care for another relative, leaving the Appellant home for a few weeks at a time with neighbors checking on the Appellant. (Exhibit 1, pages 12 and 16; ASW Testimony) 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 16) Accordingly, the ASW determined the Appellant's HHS case must be terminated in accordance with the Adult Services Manual policy.

The Appellant disagrees with the termination. The Appellant's sister testified that she provides hands on assistance with some ADLs and all the IADLs. The Appellant's sister testified that grooming consists of cutting hair, trimming eyebrows and put on deodorant because the Appellant will put it all over his body instead of just under his arms. The Appellant's sister also has to straighten the Appellant's clothing because he does not put it on properly. The Appellant has broken all the faucets in the house, therefore, his sister has to run the bath water. Further, the Appellant's sister also has to put the soap in because the Appellant would put the whole bottle of soap in the water if he did it. Prompting and supervision are also necessary regarding actually getting in the tub to wash appropriately. The Appellant's sister further described many needs for hands on assistance with IADLs as well as other activities not included in the HHS program, such as getting to medical appointments. The Appellant's sister works on the Appellant's behalf 24 hours every day. The Appellant's sister was not aware she had to describe the assistance she provides for the Appellant in so much detail because HHS has been authorized in the past without any problems. The Appellant's sister was also not aware she had to put someone on a list to fill in for her when she was out of town. However, the Appellant's sister explained that this was a limited circumstance last year when it was believed another sister was dying and mostly, the Appellant went with her on these trips. The Appellant's sister noted she has never received the policy manuals and was unaware of the relatively recent policy change requiring a need for hands on assistance

[REDACTED]

with at least one ADL. It was also noted that the Appellant's sister has some trouble with reading when she introduced the letter obtained from the Appellant's doctor. (Sister Testimony)

A [REDACTED], letter from the Appellant's psychiatrist was submitted stating the Appellant needed assistance with his daily personal care. (Exhibit 2) However, this letter does not describe the level of assistance the Appellant needs with any specific activities.

It is noted that the prior ASW had authorized HHS for the ADLs of bathing, grooming and dressing indicating prior rankings at functional level 3 or greater. This ASW's determination was understandable based on his understanding of the Appellant's functional abilities and needs from the [REDACTED] home visit. However, the Appellant's sister's credible testimony indicates there were some miscommunications regarding ADLs. For example, the Appellant's sister told the ASW the Appellant can physically wash himself, but this did not mean the Appellant could do everything with only prompting and supervision. The Appellant's sister testified she must run the water and put in the soap for the Appellant. Managing faucets is part of the functional ranking and definition for bathing. (Adult Services Manual (ASM) 121, 11-1-2011, Page 1 of 4) This would support a functional ranking at level 3 for bathing. The Appellant's sister also described a need for hands on assistance with some grooming tasks, such as physically putting on deodorant for the Appellant. Grooming for the HHS program is defined as maintaining a neat appearance and personal hygiene. (Adult Services Manual (ASM) 121, 11-1-2011, Page 2 of 4) Putting on deodorant on the Appellant would support a functional ranking at level 3 for grooming. Regarding dressing, the Appellant's sister's testimony did not indicate the Appellant is unable to put on/take off garments himself or that he needs assistance with fastening/unfastening, tying shoes, zipping, buttoning, etc. (See Adult Services Manual (ASM) 121, 11-1-2011, Page 2 of 4) Rather, the Appellant's sister's testimony only indicates she straightens clothing out once he has it on. This would not be sufficient to allow for a functional ranking at level 3.

There was sufficient evidence to establish that the Appellant requires hands on assistance, functional level 3 or greater, with at least one ADL. Retroactive to the [REDACTED] effective date, the Appellant's HHS case shall be reinstated, the Appellant's functional rankings for bathing and grooming shall be adjusted to level 3, and HHS hours for bathing and grooming shall be added to the time and task authorization in accordance with the functional ranking at level 3.

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.

[REDACTED]

IT IS THEREFORE ORDERED THAT:

The Department's decision is REVERSED. Retroactive to the [REDACTED] effective date, the Appellant's HHS case shall be reinstated, the Appellant's functional rankings for bathing and grooming shall be adjusted to level 3, and HHS hours for bathing and grooming shall be added to the time and task authorization in accordance with the functional ranking at level 3.

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

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

***** 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.

CL/db

cc: [REDACTED]