

**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. 2013-36674 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, appeared and testified. ██████████, Caregiver, appeared as a witness for the Appellant. ██████████, Appeals Review Officer, represented the Department. ██████████, Adult Services Worker ("ASW"), and ██████████ Adult Services Supervisor, appeared as witnesses for the Department.

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 ██████████, the Appellant applied for the HHS program. (Exhibit 1, pages 14-15)
2. On ██████████, the Department received a DHS-54A Medical Needs form with a medical provider signature date of ██████████. A medical need for assistance was certified and the specific activities of meal preparation, shopping, laundry and housework were circled. (Exhibit 1, page 18)
3. On ██████████ the ASW went to the Appellant's home to complete an initial evaluation. The Appellant and his son, the intended HHS provider at that time, were present. The ASW went over the Activities of Daily Living ("ADLs") and Instrumental Activities of Daily Living ("IADLs") included in the HHS program. The ASW also observed the Appellant put on a shirt, walk, and sit without assistance or adaptive equipment. (Exhibit 1, pages 23-26)

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4. On [REDACTED], the ASW called the Appellant's doctor's office about the DHS-54A Medical Needs form with a signature date of [REDACTED]. The doctor's office stated they did not have a copy of this form on file and the last DHS-54A they have is from [REDACTED], but they need to confirm this with another staff member. (Exhibit 1, page 22)
5. On [REDACTED] the ASW called the Appellant's doctor's office and the other specified staff member was not in the office that day. (Exhibit 1, page 22)
6. On [REDACTED], the ASW called the Appellant's doctor's office and the other specified staff member confirmed there was no DHS-54A Medical Needs form on file dated [REDACTED] (Exhibit 1, page 22)
7. On [REDACTED], the Department sent the Appellant an Adequate Action Notice which informed him that the HHS application was denied because the Department verified that the Appellant's doctor did not complete the DHS-54A Medical Needs form dated [REDACTED] and the Appellant had not signed the HHS application. A new DHS-54A Medical Needs form and another HHS application were enclosed for the Appellant to return within [REDACTED] days. (Exhibit 1, pages 5-9)
8. On [REDACTED], the Appellant submitted the second application for the HHS program. (Exhibit 1, pages 16-17)
9. On [REDACTED], the Department received a DHS-54A Medical Needs form with a medical provider signature date of [REDACTED]. A medical need for assistance was certified and the specific activities of taking medications, meal preparation, shopping, laundry and housework were circled. (Exhibit 1, page 19)
10. On [REDACTED], the ASW called the Appellant's doctor's office and the other specified staff member stated that sometimes the doctor completes the form and returns it to the client before a copy can be made. (Exhibit 1, page 22)
11. Based on the information available at the time of the assessment, the ASW concluded that the Appellant did not have a medical need for hands on assistance, functional ranking 3 or greater, with any ADL. (Exhibit 1, page 21; ASW Testimony)
12. On [REDACTED], the Department sent the Appellant an Adequate Action Notice which informed him that the HHS application was denied based on the new policy requiring a need for hands on assistance with at least one ADL. (Exhibit 1, pages 5-13)

13. On or about ██████████ the Appellant's hearing request was received by the Michigan Administrative Hearing System.

CONCLUSIONS OF LAW

The Medical Assistance Program is established pursuant to Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). It is administered in accordance with state statute, the Social Welfare Act, the Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

Home Help Services (HHS) are provided to enable functionally limited individuals to live independently and receive care in the least restrictive, preferred settings. These activities must be certified by a physician and may be provided by individuals or by private or public agencies.

Adult Services Manual (ASM) 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. 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) 105,
11-1-2011, Pages 2-3 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, 5-1-12, 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.

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

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.

Adult Services Manual (ASM) 101, 11-1-2011,
Pages 3-4 of 4.

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In the present case, the Department received the Appellant's initial application for the HHS program on [REDACTED] (Exhibit 1, pages 14-15) On [REDACTED] the Department also received a DHS-54A Medical Needs form with a medical provider signature date of [REDACTED]. A medical need for assistance was certified and the specific activities of meal preparation, shopping, laundry and housework were circled. (Exhibit 1, page 18)

On [REDACTED], the ASW went to the Appellant's home to complete an initial evaluation. The Appellant and his son, the intended HHS provider at that time, were present. The ASW went over the ADLs and IADLs included in the HHS program. The ASW also observed the Appellant put on a shirt, walk, and sit without assistance or adaptive equipment. The ASW's narrative note was very detailed about the discussion, including the questions asked about parts of the various ADLs and the information reported by the Appellant. The only documented reported need for ADL assistance was that sometimes assistance is needed with clothes, such as pants and supportive stockings. (Exhibit 1, pages 23-26)

On [REDACTED], the ASW called the Appellant's doctor's office about the DHS-54A Medical Needs form with a signature date of [REDACTED]. The doctor's office stated they did not have a copy of this form on file and the last DHS-54A they have is from [REDACTED] but they needed to confirm this with another staff member. On [REDACTED] the ASW called the Appellant's doctor's office and the other specified staff member was not in the office that day. On [REDACTED] the ASW called the Appellant's doctor's office and the other specified staff member confirmed there was no DHS-54A Medical Needs form on file dated [REDACTED] (Exhibit 1, page 22) Accordingly, on [REDACTED] the Department sent the Appellant an Adequate Action Notice which informed him that the HHS application was denied because the Department verified that the Appellant's doctor did not complete the DHS-54A Medical Needs form dated [REDACTED] and the Appellant had not signed the HHS application. A new DHS-54A Medical Needs form and another HHS application were enclosed for the Appellant to return within [REDACTED] days. (Exhibit 1, pages 5-9)

On [REDACTED], the Appellant submitted a [REDACTED] application for the HHS program. (Exhibit 1, pages 16-17) On [REDACTED], the Department also received a DHS-54A Medical Needs form with a medical provider signature date of [REDACTED]. A medical need for assistance was certified and the specific activities of taking medications, meal preparation, shopping, laundry and housework were circled. (Exhibit 1, page 19) It is noted that doctor's signature is the same as the signature on the [REDACTED] DHS-54A Medical needs form. On [REDACTED] the ASW called the Appellant's doctor's office and the other specified staff member stated that sometimes the doctor completes the form and returns it to the client before a copy can be made. (Exhibit 1, page 22) This would explain why the doctor's office reported they did not have a copy of the [REDACTED] DHS-54A Medical Needs form on file.

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However, based on the information available for this initial assessment, the ASW concluded that the Appellant did not have a medical need for hands on assistance, functional ranking 3 or greater, with any ADL. The ASW ranked the Appellant as functional level 1 for all the ADLs. Accordingly, the ASW denied the Appellant's HHS application. (Exhibit 1, page 21; ASW Testimony)

The Appellant disagrees with the denial and testified his son helped him get up from bed when the ASW came for the home visit, his son opened the door for the ASW, then the Appellant put on a shirt and sat on the couch. During this time he only moved about ██████ feet. The Appellant stated he told the ASW his son helps to wash him up, but the ASW took it as the Appellant did it himself. The Appellant stated he bathes daily and may need bathing assistance with getting up or if he does not have strength that day. The Appellant tried to get the ASW to see the wheelchair and scale in his room. The Appellant testified he does not use the wheelchair in his home, just to go back and forth to the hospital. The Appellant explained his medical conditions, noting that he has to monitor his weight for fluid retention due to his heart condition. The Appellant has problems with breathing, walking, his back, his legs and his heart. The Appellant cannot get on the list for a donor heart and there is nothing more they can do for him. The Appellant felt the ASW was against him and knew she would deny his HHS application. The Appellant's caregiver had to have an arm surgery around the time of the ASW's home visit, but the Appellant understood that he had to have his helper there with him for the home visit. Therefore, the Appellant's son was the proposed caregiver at that time. (Appellant Testimony)

The Appellant's caregiver testified that she assists the Appellant with daily activities like cooking, cleaning, doing his clothes, setting his medications out, bringing him to appointments and everything. The Appellant's caregiver also stated that the Appellant's condition has worsened and a lot of what the Appellant could do before she now has to do for him. (Caregiver Testimony)

The evidence was not sufficient to establish the Appellant had a need for hands on assistance, functional ranking 3 or greater, with at least one ADL, at the time of the initial assessment. The ASW's narrative note indicates that during the home visit, the Appellant only reported a need for ADL help of sometimes needing assistance with dressing his lower body. The Appellant testified he also reported needs for assistance with bathing during the home visit. However, the ASW's determination that there were no needs for hands on assistance, functional ranking 3 or greater, with ADLs was consistent with both DHS-54A Medical Needs forms completed by the Appellant's doctor, on which only IADLs were circled. The policy does not allow for an HHS authorization when the only medically necessary needs for hands on assistance, functional ranking 3 or greater, are with the IADLs: taking medications, shopping, housework, laundry, and meal preparation. Other reported needs for assistance, such as getting to the doctor, are not included in the HHS program. Based on the available information, the Appellant did not require hands on assistance, functional ranking 3 or greater, with at least one ADL at the time of the ASW's initial assessment. Accordingly, the denial of the Appellant's HHS application must be upheld.

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The testimony of the Appellant and his Caregiver indicate there have been some changes in the Appellant's condition, functional abilities and needs for assistance since the initial assessment. If he has not already done so, the Appellant can re-apply for the HHS program at any time and provide updated medical verification.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

/s/

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

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

CL/db

cc: [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.