

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. 2013-32347 HHS

██████████

██████████

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 his own behalf. ██████████ 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 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's physician completed a DHS-54A Medical Needs form. In section I, where the physician would certify that the Appellant had a medical need for assistance with personal care activities, the checkboxes for both "yes" and "no" were marked and what appears to be a circle was written over the "no" checkmark. The personal care activities of bathing, meal preparation, shopping, laundry, and housework were circled. (Exhibit 2, page 3)
2. On ██████████, the Appellant applied for the HHS program and submitted the ██████████ DHS-54A medical Needs form to the Department. (Exhibit 1, page 6; Exhibit 2, page 3)
3. The Appellant has been diagnosed with hypertension, alpha 1-antitrypsin deficiency, emphysema on continuous oxygen, and low back pain. (Exhibit 2, pages 2-3)

4. 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 and his caregiver were present. The ASW understood that the Appellant had needs for assistance with bathing, mobility, housework, shopping, laundry and meal preparation. (Exhibit 1, pages 17-18; ASW Testimony)
5. The ASW determined that the Appellant ranked at: functional level 2 for medications; functional level 3 for bathing, mobility, housework, shopping and meal preparation; and functional level 4 for laundry. The ASW authorized a total of ██████ hours and ██████ minutes per month of HHS for assistance with the activities ranked at functional level 3 or greater. (Exhibit 1, pages 19-22)
6. On ██████████, the Department sent the Appellant an Adequate Action Notice which stated the Medical Needs form could not be accepted because it appeared to have been altered. Another Medical Needs form was enclosed for the Appellant's doctor to complete and return to the Department by fax and the original in the provided envelope. This notice further indicated additional forms were enclosed for the Appellant to sign. (Exhibit 1, pages 10-14)
7. On ██████████, the Appellant's physician completed a DHS-54A Medical Needs form certifying that the Appellant had a medical need for assistance with personal care activities, again circling bathing, meal preparation, shopping, laundry, and housework. (Exhibit 2, page 2)
8. On ██████████, the Department sent the Appellant a Services and Payment Approval Notice which informed him that he was approved for HHS with a monthly care cost of ██████ with a start date of ██████████. (Exhibit 1, pages 8-9)
9. On ██████████, the Department sent the Appellant another Services and Payment Approval Notice. (Exhibit 2, page 1)
10. On ██████████, the Appellant's request for hearing was received by the Michigan Administrative Hearing System, in part stating the ██████r Services and Approval Notice was not received until ██████████ (Exhibit 1 pages 4-5)

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) 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.

If the medical needs form has not been returned, the adult services specialist should follow-up with the client and/or medical professional.

Do **not** authorize home help services prior to the date of the medical professional signature on the DHS-54A.

The medical needs form does not serve as the application for services. If the signature date on the DHS-54 is **before** the date on the DHS-390, payment for home help services must begin on the date of the application.

*Adult Services Manual (ASM) 115,
11-1-2011, Pages 1-2 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 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.

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

Effective Date

On ██████████, the Appellant applied for the HHS program and submitted the ██████████ DHS-54A medical Needs form to the Department. (Exhibit 1, page 6; Exhibit 2, page 3) The ASW stated the form appeared to be altered. (ASW Testimony) It is noted that in section I, where the physician would certify that the Appellant had a medical need for assistance with personal care activities, the checkboxes for both “yes” and “no” were marked and what appears to be a circle was written over the “no” checkmark. The personal care activities of bathing, meal preparation, shopping, laundry, and housework were circled. (Exhibit 2, page 3) Accordingly, it is understandable the clarification was needed to determine if the Appellant’s doctor was certifying that the Appellant had a medical need for assistance.

However, the ASW did not let the Appellant know there was any concern with the medical certification form until the ██████████ Adequate Action Notice was issued. (Exhibit 1, pages 10-14) The Appellant’s physician completed another DHS-54A Medical Needs form on ██████████ certifying that the Appellant had a medical need for assistance with personal care activities, again circling bathing, meal preparation, shopping, laundry, and housework. (Exhibit 2, page 2) Accordingly, it appears that the ██████████ DHS-54A Medical Needs form was not altered, rather, there was only a correction because “no” was inadvertently checked.

The Appellant should not have been penalized for the Department waiting to clarify the medical certification. The Appellant’s physician clearly certified the medical need for assistance with the same circled activities on the second DHS-54A Medical Needs form. With this clarification of the doctor’s certification, the Department should have utilized the original ██████████ DHS 54-A Medical Needs form in determining the effective date HHS services would start for the Appellant’s ██████████ application. The effective date should have been the ██████████ application date because there was medical certification, which has since been clarified, dated prior to the HHS application.

Amount of HHS Authorization

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 and his caregiver were present. The ASW understood that the Appellant had needs for assistance with bathing, mobility, housework, shopping, laundry and meal preparation. There was also some discussion of how many days per week these activities were completed. (Exhibit 1, pages 17-18; ASW Testimony)

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The ASW determined that the Appellant ranked at: functional level 2 for medications; functional level 3 for bathing, mobility, housework, shopping and meal preparation; and functional level 4 for laundry. The ASW authorized a total of [REDACTED] hours and [REDACTED] minutes per month of HHS for assistance with the activities ranked at functional level 3 or greater. (Exhibit 1, pages 19-22)

The Appellant asserted that the HHS authorization was not sufficient to meet his needs. The Appellant and his caregiver testified that more time is needed to complete the activities. (Appellant and Caregiver Testimony)

Regarding bathing, the ASW's functional ranking at level 3 and authorization of [REDACTED] minutes per day, [REDACTED] days per week ([REDACTED] hours and [REDACTED] minutes per month) was consistent with her understanding that the Appellant only needed hands on assistance with getting in/out of the tub and that the Appellant could wash his own body parts. (Exhibit 1, pages 19-20) The HHS program would not compensate for time the Appellant's caregiver is present while the Appellant bathes himself. The policy is clear that assistance that is at functional ranking level 2, such as supervision or monitoring, is not covered in the HHS program. Therefore, HHS hours could only be authorized for the hands on assistance with getting in/out of the tub. However, the Appellant and his caregiver credibly testified that the Appellant has trouble breathing if he has to bend over, particularly with bathing due to the steam from the shower, so some assistance is provided with washing his lower legs and feet. (Appellant and Caregiver Testimony) It is noted that the Appellant's physician indicated on the DHS-54A Medical Needs forms that the Appellant has emphysema and is on continuous oxygen. (Exhibit 2, pages 2-3) Further, the ASW noted limitations with bending in her notes about the IADLs. (Exhibit 1, pages 17-18 and 20-21)

Regarding mobility, the ASW's functional ranking at level 3 and authorization [REDACTED] minutes per day, [REDACTED] days per week ([REDACTED] hours per month) was consistent with her understanding that the Appellant only needed manual assistance from another person about [REDACTED] days per week and not constantly. (Exhibit 1, pages 19 and 21) It was also noted that the Appellant has a cane. (Exhibit 1, pages 17-18)

Regarding the IADLs of housework, shopping, laundry and meal preparation, the Department policy allows for a maximum of [REDACTED] hours per month for housework, [REDACTED] hours per month for shopping, [REDACTED] hours per month for laundry and [REDACTED] hours per month for meal preparation when there is no need to prorate for a shared household. There was no evidence the Appellant lives in a shared household. The ASW ranked the Appellant at functional level 3 for housework, shopping, and meal preparation and functional level 4 for laundry. The ASW noted: the Appellant's provider cooks [REDACTED] meals [REDACTED] days per week for the Appellant; the Appellant does not have the endurance to stand and cook; the Appellant lacks the endurance due to his limited standing and walking abilities to complete the tasks; the Appellant is limited in his bending, stretching, and stooping abilities. (Exhibit 1, pages 17-18 and 20-21)

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The ASW authorized [redacted] minutes [redacted] days per week ([redacted] hours and [redacted] minutes per month) for meal preparation. Yet the ASW only authorized [redacted] minutes [redacted] per week ([redacted] hour and [redacted] minutes per month) for housework, [redacted] minutes [redacted] per month ([redacted] minutes total per month) for laundry, and [redacted] minutes [redacted] per month ([redacted] minutes total per month) for shopping. It appears this was a result of the ASW utilizing the reasonable time schedule minutes per day for these IADLs, which are based on the policy maximums and the activity being completed [redacted] days per week. When one of these IADLs is completed less frequently than [redacted] days per week, it is often appropriate to increase the minutes per day from the reasonable time schedule guideline, to ensure that the resulting HHS authorization is appropriate to meet the medically necessary needs for assistance while still ensuring the total monthly authorization remains within the maximum authorization allowed by the policy. The HHS authorizations for housework, laundry, and shopping are not sufficient to meet the Appellant's medically necessary needs for assistance with these activities.

The Department erred in determining the effective date for the start of the Appellant's HHS services and the amount of the HHS authorization. The Department must reassess the Appellant's HHS case to determine the appropriate HHS authorization. Further, HHS payments can be authorized for any services included in the HHS authorization retroactive to the [redacted] application date so long as the Appellant can establish that the assistance was provided by his enrolled HHS provider during that time period.

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 hours for the Appellant based on the available information.

IT IS THEREFORE ORDERED THAT:


The Department's decision is REVERSED. The effective date for the start of the HHS authorization should be [redacted]. The Department must re-assess the Appellant's HHS case. HHS payments can be authorized for any services included in the HHS authorization retroactive to [redacted] so long as the Appellant can establish that the assistance was provided by his enrolled HHS provider during that time period.

/s/

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

Date Signed: [redacted]

Date Mailed: [redacted]


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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.