

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. 2013-37473 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 ██████████ ██████████ ██████████ mother, represented the Appellant. ██████████ ██████████ 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 and authorize 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 status post stroke left hemiparesis, hypertension, cephalgia and emotional disorder. (Exhibit 1, page 18; Exhibit 2)
3. The Appellant lives alone. (Exhibit 1, page 17)
4. The Appellant's mother was his enrolled HHS provider. (Exhibit 1, pages 21-23)

5. The Appellant had been receiving █████ hours and █████ minutes of HHS for assistance with bathing, dressing, transferring, housework, laundry, shopping, and meal preparation with a monthly care cost of █████ (Exhibit 1, page 24)
6. On █████ the ASW went to the Appellant's home and completed an in-home assessment for a review of the Appellant's HHS case. The Appellant's mother was present. The ASW noted "there will be no changes in services at this time as [the Appellant] has not had any changes in his needs." It was also reported that the Appellant's mother would be providing the needed services through an agency, Golden Years. (Exhibit 1, page 16)
7. The ASW enrolled █████ as the HHS provider for the Appellant effective █████ (Exhibit 1, pages 22-23)
8. At the time of the actions taken in this case, the county HHS provider rates for █████ County were █████ for individual providers and █████ for agency providers. Adult Services Manual (ASM) 138, 11-1-2011, page 3 of 3.
9. On █████ the Department issued a Services and Approval Notice to the Appellant indicating his HHS authorization was increased to █████ effective █████ due to the agency provider enrollment. (Exhibit 1, page 11)
10. On █████ the Department issued a Services and Approval Notice to the Appellant indicating his HHS authorization was increased to █████ effective █████ due a modification of the laundry time. (Exhibit 1, page 12)
11. The time and task authorization for the total monthly care cost of █████ only allowed for █████ hours and █████ minutes of HHS. (Exhibit 1, page 25)
12. On █████ the Department issued a Services and Approval Notice to the Appellant indicating his HHS authorization was increased to █████ effective █████ due to adjusting shopping and errands. (Exhibit 1, page 13)
13. The time and task authorization for the total monthly care cost of █████ only allowed for █████ hours and █████ minutes of HHS. (Exhibit 1, page 26)
14. On █████ the request for hearing filed on the Appellant's behalf 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) 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 1of 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.

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

Adult Services Manual (ASM 120, 5-1-2012), addresses the adult services comprehensive assessment:

INTRODUCTION

The DHS-324, Adult Services Comprehensive Assessment is the primary tool for determining need for services. The comprehensive assessment must be completed on **all open independent living services cases**. ASCAP, the automated workload management system, provides the format for the comprehensive assessment and all information will be entered on the computer program.

Requirements

Requirements for the comprehensive assessment include, but are not limited to:

- A comprehensive assessment will be completed on all new cases.
- A face-to-face contact is required with the client in his/her place of residence.
- The assessment may also include an interview with the individual who will be providing home help services.
- A new face-to-face assessment is required if there is a request for an increase in services before payment is authorized.
- A face-to-face assessment is required on all transfer-in cases before a payment is authorized.
- The assessment must be updated as often as necessary, but minimally at the six month review and annual redetermination.
- A release of information must be obtained when requesting documentation from confidential sources and/or sharing information from the department record.

- Use the DHS-27, Authorization to Release Information, when requesting client information from another agency.
- Use the DHS-1555, Authorization to Release Protected Health Information, if requesting additional medical documentation; see RFF 1555. The form is primarily used for APS cases.
- Follow rules of confidentiality when home help cases have companion APS cases, see SRM 131 Confidentiality.

Functional Assessment

The **Functional Assessment** module of the **ASCAP** comprehensive assessment is the basis for service planning and for the home help services payment.

Conduct a functional assessment to determine the client's ability to perform the following activities:

Activities of Daily Living (ADL)

- Eating.
- Toileting.
- Bathing.
- Grooming.
- Dressing.
- Transferring.
- Mobility.

Instrumental Activities of Daily Living (IADL)

- Taking Medication.
- Meal Preparation and cleanup.
- Shopping.
- Laundry.
- Light Housework.

Functional Scale

ADLs and IADLs are assessed according to the following five-point scale:

1. Independent.
Performs the activity safely with no human assistance.
2. Verbal Assistance.
Performs the activity with verbal assistance such as reminding, guiding or encouraging.
3. Some Human Assistance.
Performs the activity with some direct physical assistance and/or assistive technology.
4. Much Human Assistance.
Performs the activity with a great deal of human assistance and/or assistive technology.
5. Dependent.
Does not perform the activity even with human assistance and/or assistive technology.

Home help payments may only be authorized for needs assessed at the 3 level ranking or greater.

An individual must be assessed with at least one activity of daily living in order to be eligible to receive home help services.

Note: If the assessment determines a need for an ADL at a level 3 or greater but these services are not paid for by the department, the individual would be eligible to receive IADL services.

Example: 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.*

The Appellant had been receiving [REDACTED] hours and [REDACTED] minutes of HHS for assistance with bathing, dressing, transferring, housework, laundry, shopping, and meal preparation with a monthly care cost of [REDACTED]. (Exhibit 1, page 24)

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's mother was present. The ASW noted "there will be no changes in services at this time as [the Appellant] has not had any changes in his needs." It was also reported that the Appellant's mother would be providing the needed services through an agency, [REDACTED] (Exhibit 1, page 16) This is consistent with the Appellant's mother's testimony that the ASW told her there would be no reductions to the amount of HHS authorized based on this assessment. (Mother Testimony)

The ASW enrolled [REDACTED] as the HHS provider for the Appellant effective [REDACTED] (Exhibit 1, pages 22-23) At the time of the actions taken in this case, the county HHS provider rates for [REDACTED] County were [REDACTED] for individual providers and [REDACTED] for agency providers. Adult Services Manual (ASM) 138, 11-1-2011, page 3 of 3.

On [REDACTED] the Department issued a Services and Approval Notice to the Appellant indicating his HHS authorization was increased to [REDACTED] effective [REDACTED] due to the agency provider enrollment. (Exhibit 1, page 11)

On [REDACTED] the Department issued a Services and Approval Notice to the Appellant indicating his HHS authorization was increased to [REDACTED] effective [REDACTED] due a modification of the laundry time. (Exhibit 1, page 12) The time and task authorization for the total monthly care cost of [REDACTED] only allowed for [REDACTED] hours and [REDACTED] minutes of HHS. (Exhibit 1, page 25)

On [REDACTED] the Department issued a Services and Approval Notice to the Appellant indicating his HHS authorization was increased to [REDACTED] effective [REDACTED] due to adjusting shopping and errands. (Exhibit 1, page 13) The time and task authorization for the total monthly care cost of [REDACTED] only allowed for [REDACTED] hours and [REDACTED] minutes of HHS. (Exhibit 1, page 26)

The ASW did not change the Appellant's functional rankings for any ADLs or IADLs. (ASW Testimony) The ASW's testified he increased some HHS hours, but a comparison of the time and task authorization shows no increases in hours, rather there were reductions to the HHS hours for dressing and shopping. (ASW Testimony; Exhibit 1, pages 24 and 26) The ASW testified he understood the Appellant needed assistance with buttoning or fastening clothing and could accompany on shopping trips and select some items, but had limitations with carrying and lifting. At one point the ASW also mentioned proration of HHS hours. (ASW Testimony) It is noted that the Appellant does not live in a shared household, therefore, the policy requiring proration of housework, shopping, laundry, and meal preparation would not apply in this case.

The Appellant's mother was understandably confused by the Department issuing Services and Approval notices indicating an increase in the HHS authorization when the amount of HHS hours was actually decreased. The Appellant's mother testified that beyond the physical limitations with lifting and carrying, the Appellant's state of mind does not allow him to complete shopping without assistance. Further, the Appellant does not always go with his mother when shopping is completed. (Mother Testimony) The above cited policy is clear the HHS authorizations are not limited to needs for assistance based on physical limitations. Rather "home help services are provided to enable individuals with functional limitation(s), resulting from a medical or physical disability or cognitive impairment." Adult Services Manual (ASM) 105, 11-1-2011, Page 1 of 3. Accordingly, HHS authorizations for activities like shopping can be made for any needs for hands on assistance that are due to cognitive impairments.

Regarding dressing, the Appellant's mother testified the Appellant is weak on one side and receives more assistance than just buttoning and fastening. The Appellant's mother may also help with standing to finish pulling pants up or pulling some types of shirts overhead. (Mother Testimony)

The Department did not provide sufficient evidence to support the reductions to the Appellant's HHS hours. The evidence indicates there were errors made in the Appellant's time and task authorization when the change was made to the agency provider. The Department issued three approval notices retroactive to [REDACTED], [REDACTED] of which appear to be correcting errors made with HHS hours for other IADLs. The Department has received medical verification of the diagnoses the Appellant's mother discussed as the basis of the Appellant's needs for assistance. The ASW's narrative note, as cited above, indicates that at the time of the [REDACTED] assessment the ASW did not intend to change the Appellant's HHS when the agency provider was enrolled with the higher hourly pay rate. (Exhibit 1, page 16) The ASW did not provide sufficient explanation of why he later decided to reduce the Appellant's HHS hours when it is clear no changes were reported in the Appellant's needs for assistance for this assessment. The Appellant's HHS hours should be increased retroactive to the [REDACTED] effective date to the previously authorized [REDACTED] hours and [REDACTED] minutes per month as reflected in Time and Task print out found on page 24 of Exhibit 1, and authorized at the county rate for HHS agency providers.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED THAT:

The Department's decision is REVERSED. The Department shall initiate adjusting the Appellant's HHS hours retroactive to the [REDACTED] effective date to the previously authorized [REDACTED] hours and [REDACTED] minutes per month as reflected in Time and Task print out found on page 24 of Exhibit 1, and authorized at the county rate for HHS agency providers.

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

Date Signed: June 17, 2013

Date Mailed: June 17, 2013

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.