

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

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IN THE MATTER OF:

██████████

Appellant,
_____ /

Docket No. 2013-41134 HHS

██████████
Hearing Date: June 12, 2013

ADMINISTRATIVE LAW JUDGE: William D. Bond

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 following Appellant's request for a hearing. After due notice, a telephone hearing was held on the date indicated above. The Appellant appeared and testified on his own behalf. Participants on behalf of the Department of Community Health (Department) included ██████████, Appeals Review Officer and ██████████, ██████████ County DHS Adult Services Worker.

ISSUE

Did the Department properly terminate Appellant's Home Help Services?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Appellant is a ██████-year-old (██████████) Medicaid beneficiary and a recipient of Home Help Services (HHS). (Testimony).
2. On ██████████, Appellant's physician completed a DHS-54A indicating the Appellant only had a medical need for assistance with shopping, laundry, and housework. (Exhibit A, p. 5 and testimony).
3. On ██████████, the Appellant's Adult Services Worker (ASW) completed an in-home assessment to determine Appellant's continued eligibility for HHS services. The ASW determined Appellant did not need any hands on assistance with his ADLs, only prompting and reminders. (Exhibit A, p. 10, and testimony).

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4. On [REDACTED], the Department sent Appellant an Advance Action Notice informing him that his HHS would be terminated effective [REDACTED] based on the new policy effective [REDACTED] because his most recent assessment did not identify a need for hands on assistance with an activity of daily living (ADL). (Exhibit A, pp. 6-9).
5. On [REDACTED] the Michigan Administrative Hearing System received the Appellant's Request for Hearing. (Exhibit A, p. 3).

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.

The Department of Community Health HHS Medicaid policy is found in the Department of Human Services Adult Services Manual (ASM) at ASM 100-170. Adult Services Manual 101 (11-1-2011) (hereinafter "ASM 101") address the issue of what services are included in Home Help Services and how such services are assessed:

Home Help Payment Services

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.

Home Help Services are defined as those tasks which the department is paying for through Title XIX (Medicaid) funds. These services are furnished to individuals who are **not** currently residing in a hospital, nursing facility, licensed foster care home/home for the aged, Intermediate Care Facility (ICF) for persons with developmental disabilities or institution for mental illness.

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These activities must be certified by a Medicaid enrolled medical professional and may be provided by individuals or by private or public agencies. **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.

Personal care services which are eligible for Title XIX funding are limited to:

Activities of Daily Living (ADL)

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

Instrumental Activities of Daily Living (IADL)

- Taking medication.
- Meal preparation/cleanup.
- Shopping for food and other necessities of daily living.
- Laundry.
- Housework.

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. [Emphasis added, ASM 101, pages 1-2 of 4].

ASM 120, pp. 1-3, provides that HHS policy for comprehensive assessments. ASM 120 provides in pertinent part:

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. This form is primarily used for APS cases.

- Follow rules of confidentiality when home help cases have companion adult protective services 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

Home Help Payments may only be authorized for needs assessed at the level 3 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.

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.

Complex Care Needs

Complex care refers to conditions requiring intervention with special Needs techniques and/or knowledge. These complex care tasks are performed on client's whose diagnoses or conditions require more management. The conditions may also require special treatment and equipment for which specific instructions by a health professional or client may be required in order to perform.

- Eating and feeding.
- Catheters or legs bags.
- Colostomy care.
- Bowel program.
- Suctioning.
- Specialized skin care.
- Range of motion exercises.
- Peritoneal dialysis.
- Wound care.
- Respiratory treatment.
- Ventilators.
- Injections.

When assessing a client with complex care needs, refer to the complex care guidelines on the adult services home page.

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.**

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.

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. [ASM 120, pp. 1-5].

This ALJ took testimony from the ██████████ an Adult Services worker who was standing in for ██████████ the Appellant's Adult Services Worker (ASW). ██████████ stated on ██████████, Appellant's ASW completed a face-to-face assessment for HHS services and found the Appellant was no longer eligible for HHS services. Appellant's ASW found that the Appellant did not need any hands on assistance with his ADLs; he only needed prompting and reminders. The ASW stated that the Appellant's ASW sent out an Advance Negative Action Notice to the Appellant stating that his HHS would be terminated based on the new policy requiring the need for hands on assistance with at least one activity of daily living (ADL) in order to qualify for HHS.

The ASW also referenced the DHS-54A the Appellant's physician completed on ██████████, a indicating the Appellant only had a medical need for assistance with shopping, laundry, and housework. The ASW referenced the policy on Available Services for HHS, (ASM 101), and stated activities must be certified by a Medicaid enrolled medical professional before HHS can be authorized. The ASW concluded that the above quoted policy supported the negative action she took in this case.

The Appellant testified at the hearing that he still needs help badly, that his sister takes off work and comes out to help him. Appellant stated he has no money to pay her and he got stressed out over this and ended up in the hospital. Appellant also stated that he has soreness in his legs and he has an appointment tomorrow ██████████ at ██████████, to try to find out what is wrong with his legs. Appellant acknowledged that the medical needs form submitted by the Department was filled out by his doctor, ██████████

The preponderance of the evidence in this case demonstrates that the Appellant does not need assistance with any of his ADLs and his doctor did not certify such a need.

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According to the policy quoted above, an individual is only eligible to receive HHS if the individual is assessed with at least one activity of daily living at the level 3 ranking or greater. Also a Medicaid enrolled medical professional must certify the individual has a medical need for assistance with an ADL. Accordingly, the Appellant was not found to be eligible for continued HHS and Department's decision must be sustained.

Therefore, based upon the above Findings of Fact and Conclusions of Law, the Administrative Law Judge concludes that the Department properly terminated the Appellant's HHS.

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, finds that the Department properly terminated the Appellant's Home Help Services. Accordingly, the Department's Home Help Services decision is AFFIRMED.

William D Bond

William D. Bond
Administrative Law Judge
For James K. Haveman, Director
Michigan Department of Community Health

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

WDB/db

cc: [REDACTED]

NOTICE: The Michigan Administrative Hearing System (MAHS) may order a rehearing or reconsideration on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. MAHS will not order a rehearing or reconsideration on the Department's motion where the final decision 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 date of the rehearing decision.

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Appellant may request a rehearing or reconsideration for the following reasons:

- A rehearing **MAY** be granted if there is newly discovered evidence that could affect the outcome of the original hearing decision.
- A reconsideration **MAY** be granted for any of the following reasons:
 - misapplication of manual policy or law in the hearing decision,
 - typographical errors, mathematical error, or other obvious errors in the hearing decision that effect the substantial rights of the Appellant:
 - the failure of the ALJ to address other relevant issues in the hearing decision.

The request must be submitted through the local DHS office or directly to MAHS by mail at:

Michigan Administrative Hearing System
Reconsideration/Rehearing Request
P. O. Box 30763
Lansing, Michigan 48909