

**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. 2013-47308 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 ██████████ ██████████ Dunn, Coordinator Supervisor, ██████████, represented the Appellant. ██████████ the Appellant, appeared and testified. ██████████ daughter, 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 submitted a signed application for the HHS program to the Department, but there was no date by the Appellant's signature. The Appellant also submitted a DHS-54A Medical Needs form to the Department. (Exhibit 1, page 15 and ASW Testimony)
2. The Appellant has been diagnosed with herniated discs. The Appellant reported the herniated discs were T8-T9, he was status post car accident in ██████████, and status post concussion from the accident. (Exhibit 1, page 15)
3. 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, her daughter that would be the caregiver working through the home care agency, an individual from the home care agency, and another

adult daughter of the Appellant were present. The ASW had the Appellant date her HHS application the date of the home visit, ██████████. The ASW went over the Activities of Daily Living (“ADLs”) and Instrumental Activities of Daily Living (“IADLs”) included in the HHS program. The ASW understood that the Appellant had needs for hands on assistance with several ADLs and IADLs included in the HHS program. The ASW was also familiar with the home care agency from other HHS cases and understood that they would not provide some of the services the Appellant needed. (Exhibit 1, pages 11-12; Exhibit 2; ASW Testimony)

4. On ██████████, the ASW called the Appellant’s daughter and asked for a copy of the contract the Appellant’s daughter had signed with the home care agency to determine what services would be paid in the HHS authorization. (Exhibit 1, page 10)
5. On ██████████, the ASW had not heard from the Appellant’s daughter so she called and left a message. (Exhibit 1, page 10)
6. On ██████████ the ASW received a message from an individual with the home care agency, stating the ASW did not need a copy of the contract. (Exhibit 1, page 10)
7. On ██████████, the ASW called the Appellant’s daughter again asking for the contract. The Appellant’s daughter indicated she would stop by the ASW’s office with papers she got in the mail after stopping by the home care agency. The Appellant’s daughter did not show up at the Department office. (Exhibit 1, page 10)
8. The ASW determined that the Appellant ranked at: functional level 2 for dressing and mobility; functional level 3 for bathing, grooming, toileting, medication and meal preparation; functional level 4 for laundry and shopping; and functional level 5 for housework. 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 that would be included in the services the home case agency offers based on a contract from another HHS case. (Exhibit 1, pages 16-17; Exhibit 2)
9. On ██████████, the Department sent the Appellant a Services and Payment Approval Notice which informed her that she was approved for HHS with a monthly care cost of ██████████ with a start date of ██████████ (Exhibit 1, pages 8-9)
10. On ██████████, the Appellant’s request for hearing was received by the Michigan Administrative Hearing System. (Exhibit 1 pages 3-4)

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.)

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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 a signed but undated application with the DHS-54A Medical Needs form. The ASW had the Appellant date the HHS application during the home visit with that day's date, ██████████. (ASW Testimony) The ASW then entered ██████████ date as the application date in the Department's computer system. (Exhibit 1, page 13) Accordingly, the Department then authorized HHS for the Appellant utilizing this application date, ██████████, as the effective date the Appellant's HHS services would start. (Exhibit 1, pages 8 and 13)

The above cited policy indicates HHS cannot be authorized prior to the medical certification date and that if the signature date on the medical verification is before the signature date on the HHS application, HHS payments would begin the date of the HHS application.

By the ASW's own testimony, the Appellant's HHS application was signed when it was received by the Department on ██████████. It is not clear why the ASW had the Appellant date the HHS application the date of the home visit, ██████████ rather than the date the signed application was submitted to the Department, ██████████. This then led to an error in determining the effective date for the HHS approval. The effective date should have been ██████████, the date the Appellant's signed application was received with the medical certification.

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, her daughter that would be the caregiver working through the home care agency, an individual from the home care agency, and another adult daughter of the Appellant were present. The ASW went over the ADLs and IADLs included in the HHS program. The ASW understood that the Appellant had needs for hands on assistance with several ADLs and IADLs included in the HHS program. The ASW was also familiar with the home care agency from other HHS cases and understood that they would not provide some of the services the Appellant needed. (Exhibit 1, pages 11-12; Exhibit 2; ASW Testimony)

On ██████████, the ASW called the Appellant's daughter and asked for a copy of the contract she signed with the home care agency to determine what services would be paid. On ██████████ the ASW had not heard from the Appellant's daughter so she called and left a message. On ██████████ the ASW received a message from an individual with the home care agency, stating the ASW did not need a copy of the contract. On ██████████, the ASW called the Appellant's daughter again asking for the contract. The Appellant's daughter indicated she would stop by the ASW's office

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with papers she got in the mail after stopping by the home care agency. The Appellant's daughter did not show up at the Department office. (Exhibit 1, page 10)

The ASW determined that the Appellant ranked at: functional level 2 for dressing and mobility; functional level 3 for bathing, grooming, toileting, medication and meal preparation; functional level 4 for laundry and shopping; and functional level 5 for housework. 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 that would be included in the services the home care agency offers based on a contract from another HHS case. (Exhibit 1, pages 16-17; Exhibit 2)


In this case the ASW did not contest that the Appellant actually requires more than the █████ hours and █████ minutes per month of HHS authorized by the Department. (ASW Testimony) However, the ASW can only make a determination based on the information available to her. From the home visit, the ASW understood the Appellant's daughter would be providing care for the Appellant through the home care agency. (Exhibit 1, pages 11-12) The home care agency was the only HHS provider enrolled for the Appellant. (Exhibit 1, page 17) From other HHS cases, the ASW understood the home care agency, by its contract, would not provide some of the services the Appellant needed. (Exhibit 2, ASW Testimony) The ASW made several attempts to explain this issue to the Appellant's daughter and to obtain a copy of the Appellant's daughter's contract with the home care agency to clarify what services would be provided through the home care agency. Accordingly, the ASW could not authorize HHS hours for the services that to the best of the ASW's knowledge, would not be provided through the home care agency.

The Department's determination to authorize █████ hours and █████ minutes per month of HHS with the home care agency as the enrolled HHS provider was appropriate based on the information available to the ASW at that time. The only error was with the effective date.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly assessed and authorized HHS hours for the Appellant, but erred in determining the effective date services would begin based on the available information.

IT IS THEREFORE ORDERED THAT:

The Department's decision is REVERSED. The Department shall initiate adjusting the effective date for the start of the HHS authorization to .

/s/

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

Date Signed: 

Date Mailed: 

CL/db

cc: 

***** 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.