

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH
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IN THE MATTER OF:

██████████

Appellant

Docket No. 2013-49184 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 ██████████ ██████████ mother, represented the Appellant. ██████████ ██████████, Appeals Review Officer, represented the Department. ██████████ ██████████ Adult Services Worker ("ASW"), and ██████████ ██████████, Adult Services Supervisor, appeared as witnesses for the Department. The record was left open for the Department to forward documentation the Appellant's mother had brought to the hearing, which was received on ██████████ (Exhibit 3)

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 or about ██████████, the Department received a referral for the Appellant for the HHS program. (Exhibit 1, page 9)
2. On or about ██████████ the Appellant's doctor completed a DHS-54A Medical Needs form certifying that the Appellant had a medical need for assistance with listed personal care activities. (Exhibit 2)
3. On ██████████, the ASW went to the Appellant's home to complete an initial evaluation. The Appellant and his parents were present. The Appellant's mother was the proposed HHS provider. The ASW understood that the Appellant is cognitive, speech and language impaired. The ASW went over the Activities of Daily Living ("ADLs") and Instrumental Activities of

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Daily Living (“IADLs”) included in the HHS program. It was reported that the Appellant needs verbal redirection, prompting, and reminding to complete some ADLs and IADLs. (Exhibit 1, page 15; ASW Testimony)

4. 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 or IADL. (Exhibit 1, page 16; ASW Testimony)
5. 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 11-14)
6. On [REDACTED], the Appellant’s hearing request was received by the Michigan Administrative Hearing System.
7. A Telephone Hearing date was scheduled for [REDACTED] at [REDACTED] EST at the [REDACTED] DHS office under Docket Number [REDACTED]
8. On [REDACTED] an Order of Dismissal was issued for Docket Number [REDACTED] based upon the Appellant’s failure to appear at the Oakman DHS office for the scheduled Telephone Hearing that date.
9. On [REDACTED], the Appellant and his representative filed another Request for Hearing, explaining why they did not appear for the [REDACTED] hearing and providing documentation that the Appellant had surgery that date. (Exhibit 1, pages 4-8)
10. A Telephone Hearing date was scheduled for [REDACTED] at [REDACTED] EST at the [REDACTED] DHS office under Docket Number [REDACTED] (Exhibit 1, page 3)
11. At the beginning of the [REDACTED] Telephone Hearing proceedings, the undersigned determined that the Order of Dismissal dated [REDACTED] should be vacated and the matter should proceed with a hearing on the merits of the case.
12. On [REDACTED] an Order Vacating Order of Dismissal was issued regarding Docket Number [REDACTED]

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.*

In the present case, the Department received a referral for the Appellant for the HHS program on or about ██████████. (Exhibit 1, page 9) On or about ██████████, the Appellant's doctor completed a DHS-54A Medical Needs form certifying that the Appellant had a medical need for assistance with listed personal care activities. (Exhibit 2)

On ██████████, the ASW went to the Appellant's home to complete an initial evaluation. The Appellant and his parents were present. The Appellant's mother was the proposed HHS provider. The ASW understood that the Appellant is cognitive, speech and language impaired. The ASW went over the ADLs and IADLs included in the HHS program using a list of the activities. It was reported that the Appellant needs verbal redirection, prompting, and reminding to complete some ADLs and IADLs. For example, the ASW understood that the Appellant can bath himself but may need reminding and redirecting to complete this ADL. The Appellant also stated he does chores around the home, including cleaning his room, putting away the dishes and vacuuming. 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 or IADL. (Exhibit 1, pages 15-16; ASW Testimony)

The Appellant's mother disagrees with the denial. The Appellant's mother testified that bathing is more hands on. The Appellant's mother explained that they makes sure the Appellant washes under his arms and assist with turning on the hot water so the Appellant does not get burnt. The Appellant's mother explained the Appellant also has fine motor problems and needs assistance with activities like shaving, flossing, and cutting toe nails. The Appellant also has a hard time with buttons. The Appellant is not able cook because he cannot use the stove, measure, or understand a recipe. The Appellant does not know what products to use to clean. While the Appellant's parents try to give the Appellant chores, he needs assistance and guidance to complete these tasks. The Appellant also needs some assistance with medications, like his inhaler and a breathing machine used in the winter. The Appellant's mother stated the ASW was not at the home for very long and noted she was not present during most of the ASW's assessment because she was getting her driver's license and social security card for the ASW. Further, the Appellant's mother stated her husband reported that the Appellant was upset from the ASW's visit. The Appellant's mother stated that the ASW asked a few questions during the assessment, but they did not go into major detail about the activities. (Mother Testimony; Exhibit 3)

It is noted that the Appellant's physician did not provide any diagnoses on the DHS-54A Medical Needs form. (Exhibit 2) The Appellant's mother stated that the physician that completed this form is not one the Appellant's regular treating providers, like his pediatrician or one of the specialists he sees. Rather, it appears that this was a doctor with CLS. The Appellant's mother was not sure if the Appellant saw a doctor at CLS. (Mother Testimony)

The evidence was not sufficient to establish that 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. While the Appellant's mother provided detailed information in her testimony about the Appellant's needs for assistance with ADLs, this information was not available to the ASW for the initial assessment. Even though the Appellant's mother was gone for part of the discussion during the home visit, it was uncontested that the Appellant's father remained present with the ASW and the Appellant. The ASW can only base her determination on the information provided at the time of the initial assessment. During the initial assessment, the only reported needs for assistance with ADLs and IADLs were at the functional ranking level of 2, such as reminders, prompting, guiding, redirecting, monitoring and supervision. When the answers to an ASW's initial questions about activities indicate the HHS applicant can complete a task with verbal assistance or supervision, typically this would not prompt an ASW to ask more detailed questions. Based on the available information at the time of the ASW's initial assessment, the Appellant did not require hands on assistance, functional ranking 3 or greater, with at least one ADL. Accordingly, the denial of the Appellant's ██████████ HHS application must be upheld.

