

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. 2013-52388 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 ██████████, ██████████ Healing Care Advocates, represented the Appellant. ██████████ the Appellant, appeared and testified. ██████████ 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 terminate 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 hypertension, coronary artery disease, insulin dependent diabetes mellitus, asthma and morbid obesity. Additional diagnoses of gout affecting left foot and arthritis have been reported by the Appellant. (Exhibit 1, page 18)
3. The Appellant had been receiving HHS for assistance with the Activities of Daily Living ("ADLs") of bathing and grooming as well as the Instrumental Activities of Daily Living ("IADLs") of housework, laundry, shopping and meal preparation. (Exhibit 1, page 20)

4. On ██████████ the ASW went to the Appellant's home and completed an in-home assessment for the annual review of the Appellant's HHS case. In part, the Appellant reported changes with her functional abilities and needs for assistance with bathing and grooming. The Appellant stated she could comb and brush her hair, as well as wash her own hair when she takes a shower. The Appellant reported needing assistance getting in/out of the tub after slipping and falling in the tub the summer of ██████████. The Appellant indicated she has a shower chair now, no longer sits in the bottom of the tub, and can get into the tub herself, but needs assistance getting out because it is slippery. The ASW observed the shower chair in the Appellant's tub. The Appellant also has a back brush now. The ASW reviewed the Appellant's functional abilities and needs for assistance with the other ADLs and IADLs. The ASW considered the information reported by the Appellant and her own observations of the Appellant during this assessment as well as the Appellant's reported needs for assistance from last year's review of the Appellant's HHS case. (Exhibit 1, pages 13-14 and 19; ASW Testimony)
5. Based on the available information, the ASW concluded that the Appellant did not have a need for hands on assistance, functional ranking 3 or greater, with any ADLs. (ASW Testimony)
6. On ██████████, the Department sent the Appellant an Advance Action Notice, which informed her that effective ██████████ the HHS case would be terminated based on the new policy that requires the need for hands on services with at least one ADL. (Exhibit 1, pages 8-12)
7. On ██████████, the Appellant's request for hearing filed was received by the Michigan Administrative Hearing System. (Exhibit 1, pages 4-7)
8. The Appellant meets the policy criteria for a functional ranking at level 3 for bathing due to her reliance on the shower chair.

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 1 of 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.

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 120, 5-1-2012), pages 1-4 of 5 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 HHS for assistance with the ADLs of bathing and grooming as well as the IADLs of housework, laundry, shopping and meal preparation. (Exhibit 1, page 20)

On ██████████, the ASW went to the Appellant's home and completed an in-home assessment for the annual review of the Appellant's HHS case. In part, the Appellant reported changes with her functional abilities and needs for assistance with bathing and grooming. The Appellant stated she could comb and brush her hair, as well as wash her own hair when she takes a shower. The Appellant reported needing assistance getting in/out of the tub after slipping and falling in the tub the summer of ██████████. The Appellant indicated she has a shower chair now, no longer sits in the bottom of the tub, and can get into the tub herself, but needs assistance getting out because it is slippery. The ASW observed the shower chair in the Appellant's tub. The ASW's testimony indicates she acknowledges that the Appellant relies on the shower chair to complete the ADL of bathing, which includes getting in and out of the tub. The Appellant also has a back brush now. The ASW reviewed the Appellant's functional abilities and needs for assistance with the other ADLs and IADLs. The ASW considered the information reported by the Appellant and her own observations of the Appellant during this assessment as well as the Appellant's reported needs for assistance from last year's review of the Appellant's HHS case. (Exhibit 1, pages 13-14 and 19; ASW Testimony)

The Adult Services Manual policy contains the Functional Assessment Definitions and Ranks for the ADLs and IADLs included in the HHS program. For a functional ranking of 3 for bathing, the policy states:

Minimal hands-on assistance or assistive technology required to carry out task. Generally bathes self but needs some assistance with cleaning hard to reach areas; getting in/out of tub/shower. Client is able to sponge bath but another person must bring water, soap, towel. Client relies on a bath or transfer bench when bathing. The constant presence of another is not required.

Adult Services Manual (ASM) 121, 11-1-2011,
Page 1 of 4
(Underline added by ALJ)

The Adult Services Supervisor acknowledged that the functional ranking definition for bathing at level 3 includes reliance on a shower chair. However, at a recent training, the Adult Services Supervisor attended, she asked about this and a different answer was given. The Adult Services Supervisor understood that a functional ranking at level 3 requires a need for hands on assistance, not just an adaptive aid, like a shower chair. (Adult Services Supervisor Testimony)

Based on the available information, the ASW concluded that the Appellant did not have a need for hands on assistance, functional ranking 3 or greater, with any ADLs. (ASW Testimony) Accordingly, the ASW determined that the Appellant's HHS case must be

terminated because she did not need hands on assistance, functional ranking 3 or greater, with at least one ADL. (Exhibit 1, pages 8-12)

The Appellant disagrees with the termination. The Appellant testified her doctor ordered the shower chair after she fell in the tub. The Appellant explained that while she can get in to the tub using the shower chair, the water and steam from the shower make it wet and slippery when getting out onto the linoleum floor. The Appellant understands from the therapy she received for her right arm that she should do as much for herself as she can, and she does try to. The Appellant does not want to end up in a nursing home or lose her independence. The Appellant sees a foot doctor and has received cortisone injections in her feet in addition to the doctor making sure there are no ulcers. The Appellant's daughter also provides some assistance with styling the Appellant's hair and taking care of the Appellant's fingernails. The Appellant tends to bite her nails and her nails often break. (Appellant Testimony)

The determination to remove the HHS hours for grooming was appropriate based on the Appellant's statements during the home visit about being able to complete the tasks included in grooming. The Appellant reported she can brush and comb her own hair, her fingernails break off, her foot doctor is still caring for her toe nails, and she can brush her own teeth. (Exhibit 1, pages 13-14)

However, there was sufficient evidence to establish that the Appellant meets the functional assessment definition and ranking at level 3 for bathing. The Adult Services Supervisor explained that the action in this case was supported by her understanding from a recent HHS training. However, the Adult Services Manual Policy, as written, indicates a functional ranking at level 3 can be based on a need to rely on adaptive technology/equipment in both the functional scale explanation for a ranking at level 3 and the specific functional assessment definition and ranking at level 3 for bathing. (Adult Services Manual (ASM) 120, 11-1-2011, Page 2 of 5 and Adult Services Manual (ASM) 121, 11-1-2011, Page 1 of 4) The Appellant reported getting a shower chair after a fall in the tub, relying on the shower chair to bathe, and the ASW observed the shower chair in the Appellant's tub. (Exhibit 1, pages 13-14; ASW Testimony) Even if the ASW determined there is not sufficient justification to authorize HHS hours for hands on bathing assistance from the Appellant's enrolled HHS provider, the Appellant still met the criteria for a functional ranking at level 3 for bathing due to her reliance on the shower chair. The Adult Services Manual policy is clear that a HHS case can be open, even when the only authorized paid HHS hours are for IADLs, as long as there is a need for assistance at functional ranking level 3 with at least one ADL. (Adult Services Manual (ASM) 105, 11-1-2011, Page 2 of 3) Accordingly, termination of the Appellant's HHS for not having a functional ranking at level 3 for any ADL cannot be upheld.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED THAT:

The Department's decision is REVERSED. The Department shall initiate reinstating the Appellant's HHS case retroactive to the [REDACTED] effective date for at least the HHS authorization for the IADLs.

/s/

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

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

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.