

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH
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(877) 833-0870; Fax: (517) 373-4147

IN THE MATTER OF:

██████████,

Appellant

Docket No. 2013-52628 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 ██████████ ██████████ the Appellant, appeared on her own behalf. ██████████, Appeals Review Officer, represented the Department. ██████████ Adult Services Supervisor, appeared as a witness for the Department.

ISSUE

Did the Department properly deny the Appellant's Home Help Services ("HHS") referral?

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 Appellant applied for the HHS program. (Appeals Review Officer Testimony)
2. On ██████████, the Appellant's doctor completed a DHS-54A Medical Needs form documenting diagnoses of hypertension, knee pain, and morbid obesity with a BMI of 43. The doctor certified that the Appellant has a medical need for assistance with listed personal care activities. The activities of shopping, laundry, and housework were circled. The doctor also indicated that the Appellant could work with limitations, noting no walking or heavy lifting. (Exhibit 1, page 18)
3. On or about ██████████, an ASW completed an assessment of the Appellant's need for services. The ASW never documented the specifics of his assessment nor his determination of the Appellant's eligibility for HHS. (Exhibit 1, page 17; Adult Services Supervisor Testimony)

4. The Appellant contacted the Department after about three months regarding the status of her HHS case. (Appellant Testimony)
5. On or about ██████████ the Appellant's HHS case was re-assigned to another ASW. (Exhibit 1, page 17)
6. On ██████████ the newly assigned ASW went to the Appellant's home to complete an initial evaluation. The Appellant reported sometimes needing as well as needs for assistance with getting in/out of the shower, housework, laundry, errands, and meal preparation. It was noted that the Appellant does not have a microwave. The Appellant reported mental illness and indicated her needs for HHS were mainly due to depression and mood disorder. The ASW observed the Appellant getting in/out of a chair and moving around without difficulty or assistance. (Exhibit 1, pages 16-17)
7. The second ASW ranked the Appellant at functional level 3 for the Instrumental Activities of Daily Living ("IADLs") of laundry, housework, and errands because the Appellant is not able to stand for long periods of time. The second ASW ranked the Appellant at functional level 1 for all remaining IADLs and Activity of Daily Living ("ADLs"). (Exhibit 1, page 16)
8. Based on the available information, the second ASW concluded that the Appellant was not eligible for HHS because she did not have a medical need for hands on assistance, functional ranking 3 or greater, with any ADL. (Exhibit 1, page 17)
9. On ██████████ the Department sent the Appellant an Advance Action Notice indicating the HHS case would close effective ██████████ if the necessary provider documentation was not returned. (Exhibit 1, pages 12-15)
10. On ██████████, the Department sent the Appellant an Adequate Action Notice which informed her that the HHS application was denied based on not meeting the minimum requirements as there were no identified ADL's that require assistance. (Exhibit 1, pages 8-11)
11. On ██████████ the Appellant's hearing request was received by the Michigan Administrative Hearing System. (Exhibit 1, pages 4-7)

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.*

The [REDACTED], Advance Action Notice indicating the HHS case would close effective [REDACTED], if the necessary provider documentation was not returned became moot when the [REDACTED], Adequate Action Notice was issued stating the HHS application was denied based on not meeting the minimum requirements, specifically that there were no identified ADL's that require assistance. (Exhibit 1, pages 8-11 and 12-15)

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The Department clearly failed to make their determination on the Appellant's ██████████, HHS application within the ██████ day standard of promptness. (See Adult Services Manual (ASM) 150, 11-01-2011, Page 1 of 4) However, there is no authority to order any remedy based upon the processing delay. Rather, there is only jurisdiction to review the determination made by the Department, the denial of the Appellant's HHS application.

The evidence contained many discrepancies in how the Appellant's HHS case was assessed. The Appellant testified the original ASW indicated her HHS application would be approved and processed the provider's information resulting in a provider ID number being issued for him. (Appellant Testimony) However, that ASW did not document the specifics of his ██████████ assessment, including his determination of the Appellant's eligibility for HHS and what information he relied upon to reach that determination. (Exhibit 1, page 17; Appeals Review Officer and Adult Services Supervisor Testimony) Accordingly, when the original ASW was out on a leave and the Appellant called about the status of her case, the Department reassigned the Appellant's HHS case to a new ASW, who completed the ██████████ assessment. The second ASW determined the Appellant was not eligible for HHS because there were no identified needs for assistance with ADLs. The second ASW has documented that the Appellant reported needed assistance with the ADL of bathing, specifically help getting in/out of the shower. However, it appears that the second ASW based her determination to rank the Appellant at functional level 1 for bathing on: her own documented observations of the Appellant getting in out/of a chair and moving around without difficulty during the ██████████ home visit; lack of a prescription for the observed single prong cane; and the medical verification from the Appellant's doctor that did not indicate any needs for assistance with bathing or other ADLs. (Exhibit 1, pages 8-11 and 16-18) The Appellant's testimony indicated she had a four pronged cane, a walker, and a wheelchair that she no longer fits in. The Appellant stated she has not had a single prong cane since ██████. The Appellant's testimony further indicated that some days she cannot walk, cannot stand up, and is sponge bathed with assistance rather than getting in the shower. There are additional things the Appellant cannot do, including: reaching her feet, arms and back when bathing; housework; meal preparation; and shopping. The Appellant asserted that the second ASW was very quick, rude, and did not spend much time at the Appellant's home for the assessment. The Appellant also explained that she was waiting for the second ASW's visit in a chair by the door, so she did not move far during the home visit. (Appellant Testimony)

As explained during the hearing proceedings, this ALJ is limited to reviewing the Department's determination based on information available the time of the initial assessment. While there were obvious discrepancies between the two ASW assessments, within the information available for the second ASW's assessment, and from the Appellant's testimony, overall 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 for the ██████████ HHS application. The Appellant's doctor completed a DHS-A medical needs form on ██████████. The doctor certified that the Appellant has a medical need for assistance with listed personal care activities. However, only the IADLs of shopping,

