

**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. 2013-52638 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 and testified. ██████████, Appeals Review Officer, represented the Department. ██████████, Adult Services Worker ("ASW"), appeared as a witness 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 since ██████████ (Exhibit 1, page 6)
2. The Appellant has been diagnosed with COPD, chronic bronchitis, emphysema, hypoxia, respiratory failure, acute renal failure, degenerative joint disease in shoulders and debility. (Exhibit 1, pages 5 and 7)
3. The Appellant had been receiving ██████ hours and ██████ minutes of HHS per month for assistance with the Activities of Daily Living ("ADLs") of bathing, grooming, dressing, toileting, transferring, eating and mobility as well as the Instrumental Activities of Daily Living ("IADLs") of medication, housework, laundry, shopping and meal preparation. (Exhibit 1, page 19)
4. On ██████████ the ASW went to the Appellant's home and completed an in-home assessment reviewing the Appellant's HHS case. The Appellant and her chore provider were present. It was reported that the

Appellant's husband lives in the home, works as a garage door installer/repair man, his hours are █████ am to █████ pm, and last year he made █████. It was also reported that the Appellant's husband has a bad heart with a pacemaker and has restrictions on lifting. The ASW explained that medical documentation regarding the Appellant's husband is needed if he cannot help with the Appellant as well as the work hours from his employer. The Appellant's functional abilities with the ADLs and IADLs included in the HHS program were also reviewed, including a need to increase the grooming authorization. (Exhibit 1, pages 17-18; ASW Testimony)

5. On █████, the Department sent the Appellant an Advance Action Notice, which informed her that effective █████ the HHS case would be terminated because under policy her husband is responsible for her care. To continue with the program, the ASW indicated the enclosed form should be completed by the Appellant's husband's doctor and a copy of his work schedule is needed from his employer. (Exhibit 1, pages 13-16)
6. On █████, the ASW spoke with the Appellant by phone about the █████ Advance Action Notice. It was explained that the work schedule and medical form for the Appellant's husband were needed. The Appellant again stated what her husband's job was and how much he made last year. The Appellant also stated he is on call for his job and is gone from █████ am to █████ pm, but also said sometimes he does not have to leave until █████. The Appellant was concerned about getting the paperwork to the ASW so the Appellant was given until █████ (Exhibit 1, page 17)
7. On █████, the Appellant's husband's doctor completed a DHS-54A Medical Needs form. The doctor documented that the Appellant's husband has diagnoses of peripheral neuropathy bilateral feet, congestive heart failure, and coronary artery disease with pacemaker. The doctor also certified that the Appellant's husband has a medical need for assistance with listed personal care activities and circled meal preparation, shopping, laundry and housework. (Exhibit 2, page 1)
8. On █████, of the back of the DHS-54A Medical Needs form, work hours of █████ thru █████ █████ am to █████ pm were provided. (Exhibit 2, page 2; ASW Testimony)
9. The ASW ranked the Appellant as functional level 5 for bathing, grooming, housework, laundry, shopping, and meal preparation; functional level 4 for dressing, transferring, mobility, and medication; and functional level 3 for toileting, and eating. (Exhibit 1, page 20)

10. Based on the available information, the ASW concluded that since the Appellant's spouse does not need assistance with his own ADLs he can also assist the Appellant with her ADLs. The ASW understood that a HHS case cannot be open when the authorization is only for IADLs. The ASW also questioned the work schedule for the Appellant's husband given the reported income for last year. Accordingly, the ASW determined the Appellant's HHS case must be terminated. (ASW Testimony)
11. On ██████████ the Department sent the Appellant an Advance Action Notice, which informed her that effective ██████████ the HHS case would be terminated because she has a legal spouse in the home and the spouse's medical verification did not indicate he is unable to care for the Appellant. (Exhibit 1, pages 8-12)
12. On ██████████, the Appellant's request for hearing filed was received by the Michigan Administrative Hearing System.

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 1-5 of 5 addresses the adult services comprehensive assessment and responsible relatives:

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.

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.

Example: Mrs. Smith is in need of home help services. Her spouse is employed and is out of the home Monday thru Friday from 7a.m. to 7p.m. The specialist would not approve hours for shopping, laundry or house cleaning as Mr. Smith is responsible for these tasks.

Example: Mrs. Jones is in need of home help services. Her spouse's employment takes him out of town Monday thru Saturday. The specialist may approve hours for shopping, laundry or house cleaning.

*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 is a Medicaid beneficiary who had been authorized for HHS since ██████████ (Exhibit 1, page 6)

The Appellant had been receiving ██████ hours and █████ minutes of HHS per █████ for assistance with the ADLs of bathing, grooming, dressing, toileting, transferring, eating and mobility as well as the Instrumental Activities of Daily Living IADLs of medication, housework, laundry, shopping and meal preparation. (Exhibit 1, page 19)

On ██████████, the ASW went to the Appellant's home and completed an in-home assessment reviewing the Appellant's HHS case. The Appellant and her chore provider were present. It was reported that the Appellant's husband lives in the home, works as a garage door installer/repair man, his hours are █████ am to █████ pm, and last year he made █████. It was also reported that the Appellant's husband has a bad heart with a pacemaker and has restrictions on lifting. The ASW explained that medical documentation regarding the Appellant's husband is needed if he cannot help with the Appellant as well as the work hours from his employer. The Appellant's functional abilities with the ADLs and IADLs included in the HHS program were also reviewed, including a need to increase the grooming authorization. (Exhibit 1, pages 17-18; ASW Testimony)

On ██████████, the Department sent the Appellant an Advance Action Notice, which informed her that effective ██████████ the HHS case would be terminated because under policy her husband is responsible for her care. To continue with the program, the ASW indicated the enclosed form should be completed by the Appellant's husband's doctor and a copy of his work schedule is needed from his employer. (Exhibit 1, pages 13-16)

On ██████████, the ASW spoke with the Appellant by phone about the ██████████ Advance Action Notice. It was explained that the work schedule and medical form for the Appellant's husband were needed. The Appellant again stated what her husband's job was and how much he made last year. The Appellant also stated he is on call for his job and is gone from █████ am to █████ pm, but also said sometimes he does not have to leave until █████. The Appellant was concerned about getting the paperwork to the ASW so the Appellant was given until ██████████ (Exhibit 1, page 17)

On ██████████, the Appellant's husband's doctor completed a DHS-54A Medical Needs form. The doctor documented that the Appellant's husband has diagnoses of

peripheral neuropathy bilateral feet, congestive heart failure, and coronary artery disease with pacemaker. The doctor also certified that the Appellant's husband has a medical need for assistance with listed personal care activities and circled meal preparation, shopping, laundry and housework. (Exhibit 2, page 1)

On ██████████, of the back of the DHS-54A Medical Needs form, work hours of ██████████ thru ██████████ am to ██████████ pm were provided. (Exhibit 2, page 2; ASW Testimony)

The ASW ranked the Appellant as functional level 5 for bathing, grooming, housework, laundry, shopping, and meal preparation; functional level 4 for dressing, transferring, mobility, and medication; and functional level 3 for toileting, and eating. (Exhibit 1, page 20)

Based on the available information, the ASW concluded that since the Appellant's spouse does not need assistance with his own ADLs he can also assist the Appellant with her ADLs. The ASW understood that a HHS case cannot be open when the authorization is only for IADLs. The ASW also questioned the work schedule for the Appellant's husband given the reported income for last year. Accordingly, the ASW determined the Appellant's HHS case must be terminated. (ASW Testimony)

The Appellant disagrees with the termination and testified her chore provider has not been able to continue assisting her on a regular basis without being paid. Once in the ██████████ prior to the hearing, the chore provider came over and gave the Appellant a bath and washed her hair. That is the only bath the Appellant has had. The Appellant has been lying in urine during the day, has developed a boil on her leg, and goes hungry during the day until her husband gets home. The Appellant also explained that her husband is not home during the day as much as the ASW thought. Rather, it is rare that he is home during the day. The Appellant's husband is self-employed. Due to his impairments, it takes the Appellant's husband ██████████ days now to do a job that used to take him only ██████████ day. The Appellant's husband should not even be working, but he wants to keep the insurance he is paying for. The Appellant's husband has to pay for all the supplies for each job himself, pays over ██████████ a ██████████ for his own health insurance, plus gas and heat. Accordingly, all that was left last year was ██████████ for actual income. The Appellant's husband would help the Appellant if he could and if he was home. With his impairments, the Appellant's husband can do things for himself, but is not strong enough to help her. (Appellant Testimony)

The ASW properly considered the availability and ability of the Appellant's husband to provide care for the Appellant. The Adult Services Glossary defines a responsible relative as a person's spouse or a parent of an unmarried child under age 18. (Adult Services Glossary (ASG) Glossary 12-1-2007, Page 5 of 6) The Appellant's husband meets the definition of a responsible relative. Under Department policy, HHS for the Appellant could only be authorized for those services or times which the responsible relative is unavailable or unable to provide.

The Department policy requires documentation on a DHS-54A Medical Needs form that the responsible person has disabilities of their own that prevent them from providing care. However, it is noted that the DHS-54A Medical Need form, as written, does not actually ask a medical provider about whether or not their patient is able to assist a spouse with ADLs or IADLs. Section I of the form, which the ASW relied up on this case, only asks the medical provider to address whether or not their patient has a medical need for assistance with the listed personal care activities. (Exhibit 2, page 1) Depending upon the impairment, an individual may be able to care for their own ADLs but may not be able to assist a spouse with ADLs.

Based on the policy requirement, the ASW properly requested a DHS-54A Medical Needs form from the Appellant's husband's doctor. The doctor documented that the Appellant's husband has diagnoses of peripheral neuropathy bilateral feet, congestive heart failure, and coronary artery disease with pacemaker. The doctor certified that the Appellant's husband has a medical need for assistance with listed personal care activities and circled meal preparation, shopping, laundry and housework. The doctor also noted that the Appellant spouse could work at his usual occupation but would have limitations, though the limitations were not specified. (Exhibit 2, page 1)

The ASW relied on the policy that does not allow for a HHS case to be open when the only needs for assistance are with IADLs. (Adult Services Manual (ASM) 105, 11-1-2011, Page 2 of 3 and Adult Services Manual (ASM) 120, 11-1-2011, Page 3 of 5) However, the Adult Services Manual policy is also clear that as long as there is a need for assistance at functional ranking level 3 with at least one ADL, a HHS case can be open when the only authorized paid HHS hours are for IADLs. (Adult Services Manual (ASM) 105, 11-1-2011, Page 2 of 3) In this case, the Appellant was ranked at functional level 3 or greater with seven ADLs. (Exhibit 1, page 20) Further, the Appellant's husband's doctor documented the Appellant's husband's impairments and certified that he cannot complete the IADLs of housework, shopping, laundry and meal preparation for himself. (Exhibit 2, page 1) However, there is some discrepancy between being able to work as a garage door installer/repairer, even with limitations, for ten hours per day and having a medical need for assistance with shopping, laundry, housework, and meal preparation.

The ASW understandably also had concerns about the discrepancy between the Appellant's husband's reported work hours and the low annual income. (ASW Testimony) However, it does not appear that the ASW asked the Appellant to clarify these concerns during the assessment, or even knew that he is self-employed. The Appellant was able to readily answer questions about these concerns when asked during the hearing proceedings.

The evidence in this case is not sufficient to support the Department's determination to terminate the Appellant's HHS case based on the ASW's testimony explaining the basis for her determination. The Appellant and her husband provided the ASW with what was requested, the required medical verification form completed by the Appellant's husband's doctor as well as the Appellant's husband's work schedule. The ASW appears to have not considered the policy that allows for a HHS case to be open even if

the authorized payment is only for IADLs as long as there is a need for assistance at functional ranking level 3 or greater. The Appellant is ranked at functional level 3 or greater seven ADLs. (Exhibit 1, page 20) Further, just because the Appellant's husband was not certified as needing assistance with his own ADLs, this does not establish that he is able and available to care for the Appellant. Even if there is doubt about the medical certification that the Appellant's husband needs assistance with the IADLs for himself because of the reported work schedule and type of work, the policy allows for the Appellant to receive HHS for any included ADLs and IADLs her husband is unavailable to provide the needed assistance with when he is out of the home working. Thus, even if the Appellant's husband is able to provide care for the Appellant with some activities, his long work hours out of the home [REDACTED] days per week make him unavailable to care for the Appellant during those times. If needed, more information can be requested to verify the Appellant's husband's work hours or clarify how often he does not have to leave until later in the mornings. The Appellant is eligible for HHS for any ADLs or IADLs included in the HHS program that her husband is either unable to assist her with due to his documented impairments or that he is unavailable to assist her with when he is out of the home for work.

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.
- Initiate re-assessing the Appellant's husband's ability and availability to care for the Appellant.

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

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

[REDACTED]
Docket No. 2013-52638 HHS
Decision and Order

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.