

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. 2013-53758 HHS
Case No. 1106654623

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 ██████████. ██████████ appeared on behalf of the Appellant. His witness was ██████████, spouse. ██████████, Appeals Review Officer, represented the Department. Her witness was ██████████, ASW Supervisor.

ISSUE

Did the Department properly deny the Appellant's request for Home Help Services (HHS)?

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 ██████-year old Medicaid beneficiary. (Appellant's Exhibit #1)
2. ██████████ is afflicted with; DM, DJD, gout, and HTN. (Department's Exhibit A, p. 5)
3. The Appellant is unable to raise her leg or stand for any length of time. (Department's Exhibit A, p. 10)
4. The Appellant is a Legally Incapacitated Individual. Her guardian is her son, ██████████. (Department's Exhibit A, p. 6)
5. The ASW reported that the Appellant's spouse handled the ADL of bathing for the Appellant. See Testimony.

6. The Appellant's spouse failed to produce the DHS 54A Medical Needs Form – instead he provided a doctor's note reciting the physical ailments found in item 2 – above. (Department's Exhibit A, p. 12)
7. On ██████████ the ASW sent the Appellant an Adequate Negative Action Notice informing her that HHS would be denied as she has an eligible (able and available) spouse in the home. (Department's Exhibit A, pp. 2, 7 and 9)
8. The Appellant's further appeal rights were contained therein.
9. The Department denied HHS benefits for the Appellant because, irrespective of lack of receipt of the required DHS 54A, on in-home assessment it was acknowledged by the guardian and the spouse that the Appellant's ADL and IADL needs were met by the spouse. (See Department's Exhibit A, pp. 10 – 12)
10. The instant request for hearing was received by the Michigan Administrative Hearing System (MAHS) for the Department of Community Health on ██████████. (Appellant's Exhibit #1)

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 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.

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 Service Manual (ASM) 101, 11-1-2011, pp. 3 and 4

The Adult Services Manual [120] has additional policy requirements below:

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.

(ASM 120, 11-1-2011, pp. 1-5 of 6)

A responsible relative is a person's spouse – (Emphasis supplied) Glossary ASG, 12-1-2007, at page 5 of 6.

COMPREHENSIVE ASSESSMENT

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 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.

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Adult Service Manual (ASM), §120, page 1 of 5, 5-1-2012.

Changes in the home help eligibility criteria:

Home Help Eligibility Criteria

To qualify for home help services, an individual must require assistance with at least one activity of daily living (ADL) assessed at a level 3 or greater. The change in policy must be applied to any new cases opened on or after October 1, 2011, and to all ongoing cases as of October 1, 2011.

Comprehensive Assessment Required Before Closure

Clients currently receiving home help services must be assessed at the next face-to-face contact in the client's home to determine continued eligibility. If the adult services specialist has a face-to-face contact in the client's home prior to the next scheduled review/redetermination, an assessment of need must take place at that time.

Example: A face-to-face review was completed in August 2011; the next scheduled review will be in February 2012. The specialist meets with the client in his/her home for a provider interview in December 2011. Previous assessments indicate the client only needing assistance with instrumental activities of daily living (IADL). A new comprehensive assessment must be completed on this client.

If the assessment determines a need for an ADL at level 3 or greater but these services are **not** paid for by the department, or the client refuses to receive assistance, the client would **continue** to be eligible to receive IADL services.

If the client is receiving only IADLs and does **not** require assistance with at least one ADL, the client no longer meets eligibility for home help services and the case must close after negative action notice is provided.

Each month, beginning with October, 2011, clients with reviews due who only receive IADL services must take priority.

Negative Action Notice

The adult services specialist must provide a DHS-1212, Advance Negative Action notice, if the assessment determines the client is no longer eligible to receive home help services. The effective date of the negative action is ten business days after the date the notice is mailed to the client.

Right to Appeal

Clients have the right to request a hearing if they disagree with the assessment. If the client requests a hearing within ten business days, do not proceed with the negative action until after the result of the hearing.

Explain to the client that if the department is upheld, recoupment must take place back to the negative action date if payments continue. Provide the client with an option of continuing payment or suspending payment until after the hearing decision is rendered.

If the client requests a hearing after the 10-day notice and case closure has occurred, do not reopen the case pending the hearing decision. If the department's action is reversed, the case will need to be reopened and payment re-established back to the effective date of the negative action. If the department's action is upheld, no further action is required.

Adult Service Bulletin (ASB) 2011-001;
Interim Policy Bulletin Independent Living Services (ILS)
Eligibility Criteria, pp. 1–3, October 1, 2011

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 form are acceptable for individual treated by a VA physician; see ASM 115, Adult Service Requirements.

ASM §105, page 2 of 3, November 1, 2011

ADULT SERVICES REQUIREMENTS - 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.

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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 form must be completed by the medical professional and not the client. 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.

(Emphasis supplied by ALJ) ASM 115, pages 1 and 2 of 3,
Supra

The Department's witness testified she observed that the Appellant's spouse was present during the in-home assessment. She said that the Appellant indicated a need for the ADL of bathing – however the Appellant's spouse said he took care of that service for his spouse – as well as other IADLs. This was supported by the Appellant's guardian – who also lives with the Appellant.

The guardian explained that the DHS 54A was not received, most likely, because his father has difficulty reading and writing. The Appellant's witness testified that when he received the DHS 54A Medical Need Form in the mail he discarded the form because he "...thought it was a misprint."

At the time of hearing the Appellant was still within the 90-day window for reopening of her case.

On review, the Adult Service Manual clearly prohibits assignment of HHS to an individual when there are others able and available to perform those duties while living in the home.

If there has been a significant change in medical condition for the spouse of the Appellant that did not present itself in preparation of the DHS 54A medical needs form – then this development should be presented to the ASW for possible reassessment. Otherwise the evidence today preponderates that the spouse of the Appellant was able and available to provide hands - on assistance to his wife – along with other responsible relatives.

The Appellant failed to preponderate her burden of proof.

The Department properly denied HHS.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly denied the Appellant's request for home help benefits.

IT IS THEREFORE ORDERED that:

The Department's decision is **AFFIRMED**.

/s/

Dale Malewska
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

Docket No. 2013-53758 HHS
Hearing Decision & Order

CC:



Date Signed: 9/27/2013

Date Mailed: 9/27/2013

***** 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.