

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF:

Docket No. 2013-56763 HHS

Case No. [REDACTED]

[REDACTED]
Appellant.
_____ /

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 Appellant's request for a hearing.

After due notice, a hearing was held on [REDACTED]. Appellant appeared on her own behalf. Appellant's witness was [REDACTED], Caregiver. [REDACTED], Appeals Review Officer, represented the Department of Community Health. [REDACTED], Adult Services Supervisor and [REDACTED], Adult Services Worker (ASW) appeared as witnesses for the Department.

ISSUE

Did the Department properly deny Appellant's request for additional Home Help Services hours (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. Appellant is a [REDACTED] year-old Medicaid beneficiary, born [REDACTED], who has been diagnosed with hypertension and low back pain. Appellant is blind in her right eye due to a gunshot wound in [REDACTED]. (Exhibit A, pp 9, 13)
2. On or about [REDACTED], Appellant applied for HHS. (Exhibit A, p 1)
3. As part of the application and assessment process, an Adult Services Worker (ASW) conducted a home visit with Appellant and her caregiver on [REDACTED]. (Exhibit A, p 11; Testimony)
4. Appellant lives alone in a single family home. (Exhibit A, p 9; Testimony)
5. Following the home visit, Appellant's application for HHS was granted. Appellant was to receive 66 hours and 43 minutes of HHS per month, with a total monthly care cost of \$ [REDACTED]. (Exhibit A, pp 16-17; Testimony)

6. On ██████████, the Department sent Appellant a Services and Payment Approval Notice. (Exhibit A, p 8)
7. On ██████████, Appellant's Request for Hearing was received by the Michigan Administrative Hearing System. In that request, Appellant stated that she wanted a hearing with respect to her HHS payment. (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 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 1of 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 adjoined 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*

The Department's ASW testified that he allocated 18 minutes per day, 7 days per week of HHS for assistance with bathing; 8 minutes per day, 7 days per week for grooming; 14 minutes per day, 7 days per week for dressing; 13 minutes per day, 7 days per week for toileting; 6 minutes per day, 7 days per week for transferring; 2 minutes per day, 7 days per week for medication; 10 minutes per day, 7 days per week for housework; 10 minutes per day, 1 day per week for laundry; 56 minutes per day, 1 day per week for shopping; and 44 minutes per day, 7 days per week for meal preparation. The Department's ASW testified that the times she allotted were based on Appellant's needs and the reasonable time schedule (RTS) used by the Department.

Appellant's caregiver testified that she would like to spend more time with Appellant so that Appellant can get the care she needs and deserves. Appellant's caregiver indicated that she is the first person Appellant sees in the morning when she wakes up and that they need to spend a little bit of time talking and adjusting before she can start in on her tasks. Appellant's caregiver also indicated that she needs to spend a little bit of time getting on Appellant's good side before she can get Appellant to take her

medications. Appellant's caregiver indicated that she does not have enough time to do the housework, laundry and grooming correctly, especially in-light of Appellant's incontinence. Appellant's caregiver also indicated that she would like to have additional time to come back and check on Appellant at night because there is no one else to check on her.

In her request for hearing, Appellant indicated that the total HHS comes to only 2 hours per day, 7 days per week, which is insufficient to meet her needs. Appellant indicated that if her hours were not increased she would need to be placed in a more restrictive environment and would not be able to remain in her own home. At the hearing, Appellant testified that she knows it takes a long time to bathe and groom her because she is three times larger than her caregiver. Appellant indicated that she can hardly walk, has a memory problem, and does not leave the house. Appellant testified that she would like one more hour of HHS per day so that her caregiver could come back at night and check on her.

In response, the ASW testified that HHS does not provide time for talking or monitoring a client; only time for performing the actual tasks. The ASW also indicated that Appellant's incontinence was mentioned during the assessment and is part of her care plan. The ASW indicated that Appellant receives very close to the maximum of HHS for a person without complex needs, such as Appellant.

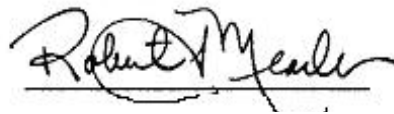
Based on the evidence presented, Appellant has failed to prove, by a preponderance of the evidence, that she requires more HHS than she was approved for. The Department's ASW properly calculated Appellant's HHS based on policy and the information provided by Appellant at their meeting. While it is understandable that Appellant's caregiver needs to spend some time talking to Appellant and "getting on her good side", those tasks are not tasks paid for by HHS. Likewise, HHS is not designed for workers to check in on, or monitor clients.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that, based on the available information, the Department properly denied Appellant's request for additional HHS.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.



Robert J. Meade
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

[REDACTED]
cc: [REDACTED]

Date Signed: October 31, 2013

Date Mailed: October 31, 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.