

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

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IN THE MATTER OF:

██████████

Appellant

Docket No. 2013-60504 HHS
Case No. 70503284

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. The hearing record was left open through ██████████ for the Department to submit additional documentation, which was received.

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 at least ██████████. (Exhibit 1, page 6)
2. The Appellant has been diagnosed with fibromyalgia, hypertension and bilateral knee pain. (Exhibit 1, page 10)
3. On ██████████, the ASW went to the Appellant's home and completed an assessment. The ASW understood that the Appellant cares for her disabled daughter and also attends school. The ASW noted that the Appellant uses a cane for mobility, though it was broken at the time of the home visit, and that the Appellant needs assistance with medication, laundry and meal preparation. The ASW further understood that the Appellant's estranged husband helps with housework, but does not live in the home with the Appellant and their daughter. (Exhibit 1, pages 9 and 12; ASW Testimony)

4. The Appellant was authorized for █████ hours and █████ minutes of HHS per month for assistance with the medication, laundry, and meal preparation. (Exhibit 1, page 13)
5. On █████, the Appellant left documentation for the Eligibility Specialist assigned to her case for other program(s). This information documented that the Appellant was employed from █████ through █████ and began receiving █████ benefits as of █████. The Appellant wrote that she is not working but has started a small business and also that her husband is not working. (Exhibit 2, pages 1-4)
6. On █████, the Appellant applied for Food Assistance Program (FAP), Child Development and Care (CDC) and State Emergency Relief (SER) for heat and electric. The application was only for the Appellant and her daughter. The Eligibility Specialist noted that the utility is in her husband's name. (Exhibit 3, page 2)
7. The Eligibility Specialist informed the ASW that the Appellant's husband also lives in the home. (ASW Testimony)
8. On █████, the Department sent the Appellant an Advance Action Notice, which informed her that effective █████ the HHS case would be terminated because she is married and her spouse is legally responsible to provide care for her. (Exhibit 1, page 5)
9. 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) 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 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.

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
(Underline added by ALJ)*

The Appellant is a Medicaid beneficiary who had been authorized for HHS since at least ██████████. (Exhibit 1, page 6)

On ██████████ the ASW went to the Appellant's home and completed an assessment. The ASW understood that the Appellant cares for her disabled daughter and also attends school. The ASW noted that the Appellant uses a cane for mobility, though it was broken at the time of the home visit, and that the Appellant needs assistance with medication, laundry and meal preparation. The ASW further understood that the Appellant's estranged husband helps with housework, but does not live in the home with the Appellant and their child. (Exhibit 1, pages 9 and 12; ASW Testimony)

The ASW ranked the Appellant as functional level 3 for medication, laundry and meal preparation, 2 for housework, and 1 for all remaining ADLs and IADLs. (Exhibit 1, page 11) The ASW testified the ranking at level 1 for mobility was an error. Due to the Appellant's use of a cane the ASW meant to rank this activity at functional level 3. Mobility still would not have been a paid task for the Appellant because the assistance is only from the cane and not from the HHS provider. (ASW Testimony) The Appellant was authorized for ██████ hours and ██████ minutes of HHS per month for assistance with the medication, laundry, and meal preparation. (Exhibit 1, page 13)

On ██████████, the Appellant left documentation for the Eligibility Specialist assigned to her case for other program(s). This information documented that the Appellant was employed from ██████████ through ██████████ and began receiving Unemployment benefits as of ██████████. The Appellant wrote that she is not working but has started a small business and that her husband is not working. (Exhibit 2, pages 1-4)

On ██████████, the Appellant applied for Food Assistance Program (FAP), Child Development and Care (CDC) and State Emergency Relief (SER) for heat and electric. The application was only for the Appellant and her daughter. The Eligibility Specialist noted that the utility is in her husband's name. (Exhibit 3, page 2) The Eligibility Specialist informed the ASW that the Appellant's husband also lives in the home. (ASW Testimony)

Based on the available information in ██████████, the ASW concluded that the Appellant's HHS case must be terminated because she is married, her spouse lives in the home and he is responsible to provide her care. (Exhibit 1, page 5; ASW Testimony) The Appellant did not report that her husband was disabled to the ASW until about a month before the ██████████, hearing proceedings. (ASW Testimony)

The Appellant disagrees with the termination and testified that during the ASW's home visit she felt the ASW wanted her to say she was legally separated from her husband. The Appellant indicated she was not trying to be dishonest. At the time of the ASW's home visit the Appellant's husband was gone several days per week because he was helping care for two of his aunts in ██████████ one of which has passed away. However, the Appellant also testified that her husband is the care provider for their disabled daughter. The Appellant explained that they had a rough year, and were even homeless from ██████████ to ██████████. The Appellant's testimony indicated she is now having a lot more issues with mobility. The Appellant also testified that her husband was diagnosed with an enlarged heart in ██████████ and he can no longer constantly run back and forth to ██████████. The Appellant acknowledged that she did not get back in touch with the ASW to let her know about any of these changes until ██████████ (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 evidence in this case was sufficient to support the Department's determination to terminate the Appellant's HHS case based on the information available in ██████████. The Appellant was only receiving HHS for medications, laundry and meal preparation. (Exhibit 1, page 13) The Appellant was married and there is not sufficient evidence to establish that her husband was unable or unavailable to care for the Appellant. The Appellant has not asserted that she is legally separated from her husband. (Appellant Testimony) There is no evidence that the Appellant's spouse was out of the home for

work or school. Rather, the only reason the Appellant provided for her husband's unavailability was that he was out of the home some days was to provide care for aunts. (Appellant Testimony) At the time the [REDACTED] notice of the HHS termination was issued, there had been no information reported to the ASW that the Appellant's spouse had an impairment that prevented caregiving for the Appellant. (ASW Testimony; Appellant Testimony) Even the Appellant's testimony indicated her husband has been able to be a care provider for aunts and their disabled daughter. (Appellant Testimony) Further, the ASW's note from the [REDACTED] home visit assessment documented that the Appellant's husband was helping with the housework at the Appellant's home. (Exhibit 1, page 12) Accordingly, the Department's determination to terminate the Appellant's HHS case is upheld based on the information available at that time.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED THAT:

The Department's decision is **AFFIRMED**

/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.