

**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:

Docket No. 2013-60515 HHS

██████████

██████████

██████████

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 the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. Appellant appeared on her own behalf. ██████████ appeared and testified as a witness on behalf of Appellant. ██████████, Appeals Review Officer, represented the Department of Community Health. ██████████ Independent Living Services Worker, appeared and testified as a witness for the Department. Additionally, ██████████ and ██████████ appeared as witnesses for the Department.

ISSUE

Did the Department properly determine Appellant's eligibility for 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 ██████ year-old Medicaid beneficiary who has been diagnosed with lupus, diarrhea, endometriosis, fibromyalgia, carpal tunnel, glaucoma, depression, bipolar disorder, and degenerative disk disease. (Department Exhibit A, p 10)
2. After Appellant requested HHS, an HHS worker completed an assessment of Appellant at her home on ██████ ██████ and noted the following:

The client lives in her own home with her ██████████ year old daughter...The clients medications were observed and recorded...the client said when it comes to baths, "it depends on how I'm feeling. My daughter helps and I have a shower chair." When it comes to grooming, the client said the provider helps with her hair every three-four days. When it comes to dressing, the client said she has pull on clothes. When it comes to toileting, the client said she can wipe herself, but she has had help in the past. When it comes to transferring, the client said she uses her cane often to help with positioning. When it comes to continence, eating, respiration, and mobility, the client said that she did not need any assistance with these tasks. When it comes to medication, the client said her daughter puts her medication in a pill case. When it comes to housework and laundry, the client said the provider performs all duties for these tasks. When it comes to shopping, the client goes with the provider or gives a list. When it comes to meal preparation, the client said that she can make simple meals but has a hard time standing on her legs. (Department Exhibit A, p 14)

3. The HHS worker who assessed Appellant gave her the following rankings: 3 for bathing, grooming, medication, and shopping for Food/Meds; 4 for housework, laundry, and meal preparation; and either a 1 or 2 for all other activities or instrumental activities of daily living. (Department Exhibit A, p 11)
4. Following the assessment, Appellant was approved to receive ████████ hours and ██████ minutes of HHS per month, for a total monthly care cost of ██████████, effective ██████████ (Exhibit A, pp 2 & 15)
5. On ██████████ the Department sent Appellant a Services and Payment Approval Notice, reflecting the approved HHS payment. (Exhibit A, p 7)
6. On ██████████ Appellant's Hearing Request, protesting her HHS amount 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 1-4 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.

Appellant testified that she should have received a HHS payment for mobility and transferring. Appellant testified that her illness is unpredictable, and she must use a cane as well as crutches. Appellant testified that she is scheduled for surgeries, and she will definitely need hands-on assistance with mobility and transferring because she is not going to be able to walk. Additionally, Appellant's provider-witness testified that Appellant needs hands-on assistance with toileting and dressing.

Appellant complained that the HHS worker who assessed her need for HHS was rude. However, a complaint as to alleged misconduct or mistreatment by a state employee cannot be considered through the administrative hearing process, but shall be referred to the Department personnel director. Michigan Administrative Code, 1979 AC, Rule 400.903(5).

In this case, Appellant has failed to prove, by a preponderance of the evidence, that she requires more HHS than she was approved for. The Department provided the necessary evidence to establish that at the time of the assessment, the HHS worker properly calculated Appellant's HHS amount, including the time and ranking for all of the ADLs and IADLs that Appellant needs assistance with, based on her interview with Appellant, her observation of the Appellant's abilities, and the information provided by Appellant during the assessment in [REDACTED]. The Department established that the Adult Services Worker followed policy and used the reasonable time schedule as a guide in determining the time that would be allocated for each task given a ranking of 3 or higher. Although Appellant does have a combination of medical problems or a severe physical impairment, the evidence on the record fails to establish that Appellant has special needs that require a deviation from the reasonable time schedule set forth in Department policy. Additionally, Appellant failed to establish that she has functional limitations so severe that her care cost cannot be met safely within the monthly HHS payment determined by the HHS worker. Further, the applicable policy states clearly that the Adult Services Worker is responsible for determining the necessity and level of need for HHS. Although the client's physician must certify that the client's need for services is related to an existing medical condition, the physician does not prescribe or authorize personal care services. If Appellant's circumstances change, she can request a reassessment of her HHS eligibility.

In conclusion, Appellant failed to provide the necessary evidence to refute the Department's HHS eligibility determination. Accordingly, the Department's eligibility determination is upheld.

DECISION AND ORDER

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

[REDACTED]
Docket No. 2013-60615 HHS
Decision and Order

IT IS THEREFORE ORDERED THAT:

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

_____/s/_____
Marya A. Nelson-Davis
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

MAND/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 must 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.