

**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.** 2013-62129 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 ██████████ spouse, represented the Appellant. ██████████ Appeals Review Officer, represented the Department. ██████████, Adult Services Supervisor, appeared as a witness for the Department. The record was left open through ██████████ for the Department to provide a copy of an employment verification form. (Exhibit 2)

**ISSUE**

Did the Department properly deny the Appellant's Home Help Services ("HHS") application?

**FINDINGS OF FACT**

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. On or about ██████████, the Appellant applied for the HHS program. (Exhibit 1, page 5)
2. The Appellant has been diagnosed with multiple sclerosis and diabetes. (Exhibit 1, page 6)
3. On ██████████, an Adult Services Worker ("ASW") spoke with the Appellant about a non-disabled spouse residing in the home per the application. The Appellant stated her spouse works and is not available to provide needed assistance and her friend acts as a caregiver. The ASW indicated she would be sending an Employment Verification form. (Exhibit 1, page 8)

4. On [REDACTED], the Appellant's spouse's employer, completed a Verification of Employment form indicating temporary employment with an estimated work schedule of [REDACTED] to [REDACTED] through [REDACTED] (Exhibit 2)
5. On [REDACTED] the ASW attempted to complete a home visit. At the Appellant's request the home visit was postponed. (Exhibit 1, page 8)
6. On [REDACTED], the ASW went to the Appellant's home to complete the initial evaluation. The Appellant and a proposed HHS provider were present. The ASW observed the Appellant ambulating with a cane that had four prongs. The Appellant reported she has relied on the cane for the past [REDACTED] years. The Appellant had other adaptive equipment, including a walker. The ASW noted that the Appellant has balance difficulties and difficulties manipulating things with her hands. The ASW understood that the Appellant's spouse lives in the home, works locally in [REDACTED], and his hours are [REDACTED] to [REDACTED]. The ASW noted which activities the Appellant is independent with and which activities her spouse assists with. In part, the ASW noted the Appellant cannot manipulate her hands to even make a sandwich. The Appellant requested the HHS provider come [REDACTED] times per week to assist with housework, laundry, and occasional meal preparation. (Exhibit 1, page 7)
7. Based on the information available at the time of the assessment, the ASW concluded that the Appellant was not eligible because the spouse is a responsible relative that should be able to assist with Instrumental Activities of Daily Living ("IADLs") during his time off. (Exhibit 1, page 5)
8. On [REDACTED], the Department sent the Appellant an Adequate Action Notice which informed her that the HHS application was denied based on the policy that a spouse is considered a responsible relative, he works week days from [REDACTED] to [REDACTED] locally in [REDACTED] and should be able to provide needed assistance during his time off. (Exhibit 1, pages 11-14)
9. The Appellant filed a timely request for hearing to contest the [REDACTED] denial of her HHS application.
10. A Telephone Hearing was scheduled for [REDACTED] at the [REDACTED] [REDACTED] under [REDACTED].
11. On [REDACTED] an Order of Dismissal was issued for [REDACTED] based upon the Appellant's failure to appear at the [REDACTED] for the scheduled Telephone Hearing that date.

12. The Appellant missed the hearing because she was admitted to the hospital after a fall. The Appellant and her husband asked the [REDACTED] office what they should do about the missed hearing and were told to file another hearing request. (Spouse Testimony)
13. On [REDACTED], the Appellant and his representative filed another Request for Hearing at the [REDACTED] office contesting the denial. (Exhibit 1, page 4)
14. A Telephone Hearing was scheduled for [REDACTED] at the [REDACTED] office under [REDACTED] based upon the [REDACTED] hearing request. (Exhibit 1, page 2)
15. At the beginning of the [REDACTED] Telephone Hearing proceedings, the undersigned went off the record to speak with a supervisor and it was determined that the Order of Dismissal dated [REDACTED] should be vacated and the matter should proceed with a hearing on the merits of the case.
16. On [REDACTED], an Order Vacating Order of Dismissal was issued regarding [REDACTED] and indicated the Decision and Order on the merits of the case would be issued under [REDACTED].

### **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.

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### **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 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.

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## 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.

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### **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*

On or about [REDACTED] the Appellant applied for the HHS program. (Exhibit 1, page 5) The Appellant has been diagnosed with multiple sclerosis and diabetes. (Exhibit 1, page 6)

On [REDACTED] an ASW spoke with the Appellant about a non-disabled spouse residing in the home per the application. The Appellant stated her spouse works and is not available to provide needed assistance and her friend acts as a caregiver. The ASW indicated she would be sending an Employment Verification form. (Exhibit 1, page 8)

On [REDACTED], the Appellant's spouse's employer, completed a Verification of Employment form indicating temporary employment with an estimated work schedule of [REDACTED] through [REDACTED] (Exhibit 2)

On [REDACTED], the ASW attempted to complete a home visit. At the Appellant's request the home visit was postponed. (Exhibit 1, page 8)

On [REDACTED] the ASW went to the Appellant's home to complete the initial evaluation. The Appellant and a proposed HHS provider were present. The ASW observed the Appellant ambulating with a cane that had four prongs. The Appellant reported she has relied on the cane for the past [REDACTED] years. The Appellant had other adaptive equipment, including a walker. The ASW noted that the Appellant has balance difficulties and difficulties manipulating things with her hands. The ASW understood that

the Appellant's spouse lives in the home, works locally in ██████████, and his hours are ██████████. The ASW noted which activities the Appellant is independent with and which activities her spouse assists with. In part, the ASW noted the Appellant cannot manipulate her hands to even make a sandwich. The Appellant requested the HHS provider come ██████████ times per week to assist with housework, laundry, and occasional meal preparation. (Exhibit 1, page 7)

The ASW ranked the Appellant as: functional level 3 for bathing, grooming, and dressing; functional level 4 for shopping; and functional level 5 for housework, laundry, and meal preparation. (Exhibit 1, page 10)

Based on the information available at the time of the assessment, the ASW concluded that the Appellant was not eligible because the spouse is a responsible relative that should be able to assist with IADLs during his time off. (Exhibit 1, page 5)

The Appellant's spouse disagrees with the termination and noted that he was not contacted as part of the initial assessment. The Appellant's spouse testified that the information regarding his work was not accurate. At times, the Appellant's spouse works out of town. In ██████████ the Appellant fell when her spouse was working out of town and was on the floor for ██████████ days. Accordingly, the Appellant's spouse has tried to work closer, such as out of the ██████████ and ██████████ offices. Additionally, the Appellant's spouse testified that the severity of the Appellant's condition is much worse now. The Appellant is falling a lot when she is by herself and needs more assistance, such as help getting on/off the toilet. The Appellant's spouse testified he continues to be unavailable to assist the Appellant when she is thirsty, hungry, or needs a bath when he out of the home for work. (Appellant Testimony)

There is no requirement for the ASW to contact the Appellant's spouse for the initial assessment. Particularly in this case, there was no reason for an additional collateral contact because the Appellant and proposed HHS provider participated in the home visit to provide the needed information to the ASW and the employment verification had been obtained from the Appellant's spouse's employer. (Exhibit 1, page 7; Exhibit 2)

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 Adult Services Manual policy, HHS for the Appellant could only be authorized for those services or times which the responsible relative is unavailable or unable to provide.

It was uncontested that the Appellant's spouse is able to provide care for the Appellant. The Appellant's spouse's availability to care for the Appellant was contested. The Appellant reported her spouse's work location was local in ██████████ as well as his work schedule to the ASW. (Exhibit 1, page 7) The work schedule was verified by the employer, specifically ██████████ through ██████████ from ██████████ (Exhibit 2) The

Appellant also reported what activities she could complete independently and what activities her spouse assists with. Further, the Appellant specified she was only requesting a HHS provider for three days per week to assist with housework, shopping and occasional meal preparation. (Exhibit 1, page 7)

The above cited Adult Service Manual policy specifies that if a spouse is only out of the home part of the day several days per week, even for █████ hours at a time █████ days per week, HHS cannot be approved for the IADLs of shopping, laundry or housework as the spouse would be responsible for those tasks. The Appellant's spouse was reported to work locally in █████ with a verified schedule of █████. Accordingly, the ASW could not approve the Appellant's request for a HHS provider for the IADLs of housework and laundry.

In reviewing the Adult Services Manual policy during the hearing proceedings, the Adult Services Supervisor acknowledged that the policy would allow for a HHS authorization for meal preparation during the times the spouse is out of the home for work. (Adult Services Supervisor Testimony) The Adult Services Manual policy requires a functional ranking of 3 or great with at least one ADL, even if the service(s) are not paid for by the department, to be eligible for a HHS authorization. The Appellant was ranked at functional level 3 for the ADLs of bathing, grooming, and dressing. However, the information available to the ASW was unclear regarding the medical necessity for a HHS provider for occasional meal preparation. The ASW noted the Appellant's difficulties with balance, utilization of adaptive equipment to ambulate, and difficulty manipulating things with her hands. The ASW even specifically wrote that the Appellant could not manipulate her hands to even make a sandwich. Yet, the Appellant only requested a HHS provider for three days per week and the meal preparation assistance requested was only occasional despite the Appellant's spouse being out of the home for work eight hours a day, five days per week. (Exhibit 1, page 7) Accordingly, it appears that arrangements could be made for the needed meal preparation assistance during the time the Appellant's spouse is at work.

The evidence in this case was sufficient to support the Department's determination to deny the Appellant's HHS application based on the information provided to the ASW for this initial assessment. The Appellant reported her husband was providing the needed assistance with ADLs. The Adult Services Manual policy does not allow for the requested HHS provider for assistance with housework and laundry based on the reported work location and verified work schedule for the Appellant's spouse. The necessity for the requested occasional meal preparation assistance was not established by the information the Appellant provided to the ASW. Accordingly, the denial of the Appellant's █████, HHS application must be upheld.

However, the Appellant's spouse's testimony indicated the Appellant's circumstances, functional abilities, and needs for assistance have changed. If she has not already done so, the Appellant may wish to reapply for the HHS program and provide updated information.

**DECISION AND ORDER**

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

**IT IS THEREFORE ORDERED THAT:**

The Department's decision is AFFIRMED.

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/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.