

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

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IN THE MATTER OF:

██████████,

Appellant

Docket No. 2013-65729 HHS

Case No. 27560954

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 on her own behalf. ██████████, ██████████, appeared as a witness for the Appellant. ██████████, Appeals Review Officer, represented the Department. ██████████, Adult Services Worker ("ASW"), and ██████████, Adult Services Supervisor, appeared as witnesses for the Department. The record was left open for the Department to forward a copy of a letter the Appellant brought to the hearing from her case manager. (Exhibit 2)

ISSUE

Did the Department properly deny the Appellant's request for an increase in his Home Help Services ("HHS") authorization?

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 has been authorized for HHS.
2. The Appellant has been diagnosed with chronic back and knee pain, high blood pressure, asthma, lumbar disc disease, COPD, obesity, and severe back pain. The Appellant has also reported pinched nerve. (Exhibit 1, pages 15-16)
3. On ██████████, the ASW completed a home visit for the annual re-determination of the Appellant's HHS case. The Appellant's son was to be enrolled as the Appellant's new HHS provider. The address on the Appellant's son's ID showed he was living at the same address as the Appellant. (Exhibit 1, page 11)

4. On ██████████, the ASW had a face to face contact with a representative from the agency being enrolled as the Appellant's new HHS provider, Total Living Home Health Care. The Appellant was in the hospital with an expected discharge date of ██████████. In part, it was reported that the agency began providing HHS services to the Appellant on ██████████. (Exhibit 1, page 11)
5. The Appellant was authorized to receive a total of 32 hours and 53 minutes of HHS for assistance with bathing, grooming, dressing, transferring, mobility, medication, housework, laundry, shopping, and meal preparation. (Exhibit 1, page 14)
6. On ██████████, the Department issued a Services and Payment Approval Notice to the Appellant indicating HHS was authorized for \$██████████ per month effective ██████████. The notice indicated the new provider was added and adjustments were made to the Time and Task Assignments based on the shared living arrangements. (Exhibit 1, pages 5-6)
7. On ██████████, the Department issued a Services and Payment Approval Notice to the Appellant indicating HHS was authorized for \$██████████ per month effective ██████████. The notice indicated the new agency provider was added. (Exhibit 1, page 7)
8. The Appellant called the ASW after getting out of the hospital and requested an increase in her HHS hours. (Appellant and ASW Testimony)
9. The Department did not issue a written notification to the Appellant of the determination to deny her request for an increase in the HHS authorization.
10. On ██████████, the Appellant's request for hearing was received by the Michigan Administrative Hearing System. (Exhibit 1, page 4)

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) 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, 5-1-12, addresses the 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 must 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 IADL's 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*

Adult Services Manual (ASM) 101, 11-1-11, addresses 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.

Adult Services Manual (ASM 150, 11-1-2011), pages 1-4 addresses notification of eligibility determinations:

INTRODUCTION

Individuals who submit an application (DHS-390) for home help services or adult community placement must be given written notification of approval or denial for services. A written notice must be sent within the 45 day standard of promptness.

Clients with active service cases must be provided written notice of any change in their services (increase, reduction, suspension or termination).

Written Notification of Disposition

All notifications are documented under ASCAP contacts when they are generated. This documentation acts as the file copy for the case record. For this purpose, the form letters used are:

- DHS-1210, Services Approval Notice.
- DHS-1212A, Adequate Negative Action Notice.

- DHS-1212, Advance Negative Action Notice.

Each notification letter includes an explanation of the procedures for requesting an administrative hearing.

The adult services specialist **must sign** the bottom of the second page of all notices (DHS-1210, DHS-1212A, DHS-1212) before they are mailed to the client.

Adequate Negative Action Notice (DHS-1212A)

The DHS-1212A, Adequate Negative Action Notice, is used and generated on ASCAP when home help services and adult community placement services cases have been denied. Appropriate notations **must** be entered in the comment section explaining the reason for the denial.

Adequate Negative Action Notices **do not** require a 10 business day notice to the client.

Administrative Hearings

The client may appeal any negative action by requesting an administrative hearing. A DCH-0092, Request for Hearing form, is generated whenever a negative action notice is printed from ASCAP and must be mailed to the client with the negative action notice.

*Adult Services Manual (ASM) 150, 11-1-2011,
Pages 1-2 of 4.*

In the present case, the Appellant called the ASW after a hospitalization requesting an increase in her HHS hours. Neither the ASW nor the Appellant could recall when the Appellant called requesting the increase. The Appellant explained that she has been in and out of the hospital every month since November last year. The Appellant testified that when the ASW told her more hours could not be authorized she asked the ASW for the hearing form. The ASW did not document this phone contact in the general narrative notes for the case. However, the ASW confirmed that the Appellant called her and requested the increase. (Appellant and ASW Testimony; Exhibit 1, page 11)

The ASW testified that when the Appellant stated she wanted an increase in her HHS hours, the reasons the Appellant gave were not services included in the HHS program. For example, having to wait for three hours at a doctor's office or waiting for a ride to go shopping. The HHS program does not deal with wait times and only includes hands on

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assistance. Accordingly, the ASW denied the request for an increase in the Appellant's HHS authorization. (ASW Testimony) However, the Department never issued written notice to the Appellant of this determination.

The Appellant is asking for just a few more hours to be added to her HHS authorization. The Appellant testified she cannot cook or use a microwave. The Appellant stated her son is on parole and while he is no longer actually living with her, he is refusing to change his address. (Appellant Testimony)

The representative from the HHS provider agency testified that she has gone to the Appellant's home many times and the Appellant was by herself. The representative from the HHS provider agency was aware that the Appellant has a lot of pain and the doctors are working on doing something about it. The representative from the HHS provider agency also confirmed that the Appellant was correct about not being able to cook. However, the agency can only have someone provide services for the amount of hours authorized by the Department. (Representative from HHS Provider Agency Testimony)

This ALJ acknowledges that the Adult Services Manual policy, as written, is not clear regarding issuing action notices when there has been a determination to continue an ongoing HHS authorization with no changes in HHS hours or total monthly care cost. However, the policy does specify that an Adequate Negative Action notice is to be issued when services have been denied, that a client may appeal any negative action by requesting a hearing, and that a request for hearing form is generated whenever a negative action notice is printed that must be mailed to the client with the negative action notice. In this case, the Appellant requested an increase in HHS services, the Department denied the request for additional HHS services, but no Adequate Negative Action notice was issued. The ASW only provided a hearing request form to the Appellant. When no written action notice is issued, the Appellant is not provided written notice of the action, the reason for the action, the legal basis for the determination and the appeal rights. It is also noted that 42 CFR § 431.220 requires an opportunity for a hearing to be granted when a claim for service is denied or is not acted on with reasonable promptness. Accordingly, a hearing can also proceed when there has been a request for services and the Department has failed to take an action with reasonable promptness.

In this case, the evidence supports the Department's determination to deny the Appellant's request for an increase in the HHS authorization. The ASW could not authorize additional HHS hours for the Appellant for services not included in the HHS program. For example, the above cited policy is clear that medical transportation is not part of the HHS program. Medical transportation is separate and the Appellant may wish to inquire about this with the Eligibility Specialist assigned to the Medicaid case. The Appellant's testimony indicated she is requesting a few additional HHS hours for meal preparation. (Appellant Testimony) The above cited policy sets out the monthly maximums allowed for the IADLs of housework, shopping, laundry and meal preparation. The Appellant is receiving one half the monthly maximum allowed by policy for shopping and meal preparation. (Exhibit 1, page 14) The ASW explained that

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based on the information available at the time of the [REDACTED], home visit, the HHS hours had been prorated by one half for these activities, as required by the above cited policy when there is a shared household. At that time, the Appellant's son's ID showed he was living at the Appellant's address and was to be enrolled as her HHS provider. The Department has not received verification that the Appellant's son is no longer living with the Appellant, such as a copy of the Appellant's son's ID showing a change of address. (ASW Testimony) Further, the Appellant's testimony indicates her son is continuing to utilize her address as his residence. (Appellant Testimony) Accordingly, an increase in the HHS hours for meal preparation cannot be authorized for the Appellant at this time. The Department's determination to deny the Appellant's request for an increase in her HHS hours must be upheld based on the available information.

Whenever the Appellant has changes in her circumstances, condition, functional abilities or needs for assistance she may wish to provide verification to the Department to support a request for an increase in her HHS hours. This may be verification of a change in living arrangements and/or medical verification of diagnoses and needs for assistance.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly determined the Appellant's request for an increase in her HHS authorization should be denied 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

[REDACTED]
Date Signed: October 28, 2013

Date Mailed: October 28, 2013

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CC:



***** 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.