

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. 2013-66153 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.*, and upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. Appellant appeared and testified on his own behalf. ██████████ Appeals Review Officer, represented the Department of Community Health. ██████████ Adult Services Worker (ASW), and ██████████, Adult Services Supervisor, appeared as witnesses for the Department.

ISSUES

Did the Department properly (1) authorize ██████████ per month of Home Help Services (HHS) for the time period between ██████████ and ██████████ and (2) terminate Appellant's HHS on ██████████

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 fibromyalgia, rheumatoid arthritis, chronic pain, and knee pain. (Respondent's Exhibit A, pages 11-12, 18).
2. On or about ██████████ Appellant was referred for HHS. (Respondent's Exhibit A, page 10).
3. As part of his application, Appellant submitted a medical needs form signed by a nurse practitioner on ██████████ (Respondent's Exhibit A, page 18).

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4. In that form, the nurse practitioner certified that Appellant had a medical need for assistance with at least some of the personal care activities listed on the form and circled the activities of laundry and housework. (Respondent's Exhibit A, page 18).
5. On ██████████ ASW ██████████ conducted a home visit and assessment with Appellant. (Respondent's Exhibit A, page 5; Testimony of ██████████).
6. Following that assessment, on ██████████ ASW ██████████ sent Appellant a written approval for HHS, with an effective start date of ██████████ (Respondent's Exhibit A, pages 19-20).
7. However, that written approval also stated in part:

At the moment we are not able to determine an exact amount of hours per month in adult home help services that DHS will pay for. We need more medical information from your physician stating the estimated length of rehab time as well as your limitations during [sic] the rehab period. Please return the medical information in as soon as possible, if you have questions feel free to call me ██████████.

Respondent's Exhibit A, page 19

8. Subsequently, ASW Helwig received a medical needs form signed by Appellant's physical therapist on ██████████ (Respondent's Exhibit A, page 11).
9. In that medical needs form, Appellant's physical therapist checked "NO" when asked to certify that Appellant has a medical need for assistance with any of the personal care tasks listed on the form. (Respondent's Exhibit A, page 11).
10. On ██████████ ASW ██████████ sent Appellant a Services Approval Notice stating that HHS had been approved in the amount of ██████████ per month, with an effective start date of ██████████ (Respondent's Exhibit A, pages 21-22).
11. Specifically, HHS was authorized for assistance with the tasks of bathing, housework, laundry, shopping and meal preparation, and in the amount of ██████████ hours and ██████████ minutes per month. (Respondent's Exhibit A, page 24).

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12. Also on [REDACTED], [REDACTED] sent Appellant an Advance Negative Action Notice stating that his HHS would be terminated on [REDACTED] because, per the medical records and medical needs form received by the Department, Appellant no longer qualified for HHS. (Respondent's Exhibit A, pages 13-17).
13. On [REDACTED], the Michigan Administrative Hearing System (MAHS) received the Request for Hearing in this matter. (Respondent's Exhibit A, 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 Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

Home Help Services 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.

In this case, Appellant appears to challenge both the amount of HHS that was authorized and the subsequent termination of those HHS.

Each of those issues will be addressed in turn and Appellant bears the burden of providing by a preponderance of the evidence that the Department erred.

For the reasons discussed below, this Administrative Law Judge finds that Appellant has failed to meet his burden of proof with respect to either issue raised in his appeal and that the Department's actions must therefore be affirmed.

Amount of HHS Authorized

Adult Services Manual 101 (11-1-2011) (hereinafter "ASM 101") and Adult Services Manual 120 (5-1-2012) (hereinafter "ASM 120") address the issues of what services are included in Home Help Services and how such services are assessed. In part, ASM 101 provides:

Home Help Payment Services

Home Help Services are non-specialized personal care service activities provided under the independent living services program to persons who meet eligibility requirements.

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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.

Home Help Services are defined as those tasks which the department is paying for through Title XIX (Medicaid) funds. These services are furnished to individuals who are **not** currently residing in a hospital, nursing facility, licensed foster care home/home for the aged, Intermediate Care Facility (ICF) for persons with developmental disabilities or institution for mental illness.

These activities must be certified by a Medicaid enrolled medical professional and may be provided by individuals or by private or public agencies. **The medical professional does not prescribe or authorize personal care services.** Needed services are determined by the comprehensive assessment conducted by the adult services specialist.

Personal care services which are eligible for Title XIX funding are limited to:

Activities of Daily Living (ADL)

- Eating.
- Toileting.
- Bathing.
- Grooming.
- Dressing.
- Transferring.
- Mobility.

Instrumental Activities of Daily Living (IADL)

- Taking medication.
- Meal preparation/cleanup.
- Shopping for food and other necessities of daily living.
- Laundry.
- Housework.

An individual must be assessed with at least one Activity of Daily Living (ADL) in order to be eligible to receive home help services.

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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

ASM 101, pages 1-2 of 4

Moreover, ASM 120 states:

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:

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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 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 determines 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.

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 it's [sic] 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.

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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.

ASM 102, pages 2-4 of 5

Here, the initial medical needs form submitted as part of Appellant's application only indicated that Appellant needed assistance with the tasks laundry and housework. (Respondent's Exhibit A, page 18). Nevertheless, ASW ██████████ ultimately approved aid for more than just those two tasks and HHS was authorized for assistance with the tasks of bathing, housework, laundry, shopping, and meal preparation. (Respondent's Exhibit A, page 24). Overall, Appellant was approved for HHS in the amount of ██████████ hours and ██████████ minutes per month, with a total monthly care cost of ██████████ per month. (Respondent's Exhibit A, pages 21-22, 24).

Appellant appears to now argue that he should have been authorized for more HHS than what was approved as he needs "all" the assistance encompassed by HHS. (Testimony of Appellant).

However, when asked about the specific assistance he needed, Appellant's testimony matched the rankings and findings of ASW ██████████ (Testimony of Appellant; Respondent's Exhibit A, page 23).

Moreover, pursuant to policy, ASW ██████████ properly prorated Appellant's assistance with the IADLs of housework, laundry, shopping and meal preparation due to the fact that Appellant lives with another adult. Appellant does not dispute that he lives in a shared household. (Testimony of Appellant; Respondent's Exhibit A, page 23).

Furthermore, while Appellant notes that his care providers were assisting him with transportation, but not being paid, transportation is not covered by the Home Help Program.

Accordingly, to the extent Appellant challenges the amount of HHS that were authorized per month, the Department's decision is sustained.

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Termination of HHS

Appellant also appeals the termination of his HHS. According to Appellant, he is still under the care of his surgeon and therefore still requires HHS.

The Department terminated Appellant's HHS after finding that Appellant no longer qualified for HHS. That finding was based in part on the second medical needs received by the Department, in which Appellant's physical therapist did not certify that Appellant has a need for personal care services.

With respect to the necessity of a medical needs form certifying a medical need for personal care services, Adult Services Manual 115 (11-1-2011) (hereinafter "ASM 115") provides:

MEDICAL NEEDS FORM (DHS-54A)

The DHS-54A, Medical Needs form must be signed and dated by a medical professional certifying a medical need for personal care services. The medical professional must be an enrolled Medicaid provider and hold one of the following professional licenses:

- Physician (M.D. or D.O.).
- Nurse practitioner.
- Occupational therapist
- Physical therapist.

Note: A physician assistant (PA) is not an enrolled Medicaid provider and **cannot** sign the DHS-54A.

The medical needs form is only required at the initial opening for SSI recipients and disabled adult children (DAC). All other Medicaid recipients must have a DHS-54A completed at the initial opening and annually thereafter.

The client is responsible for obtaining the medical certification of need but the form must be completed by the medical professional and not the the [sic] client. The National Provider Identifier (NPI) number must be entered on the form by the medical provider and the medical professional must indicate whether they are a Medicaid enrolled provider.

The medical professional certifies that the client's need for service is related to an existing medical condition. **The medical professional does not prescribe or authorize personal care services.** Needed services are determined

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by the comprehensive assessment conducted by the adult services specialist.

If the medical needs form has not been returned, the adult services specialist should follow-up with the client and/or medical professional.

Do **not** authorize home help services prior to the date of the medical professional signature on the DHS-54A.

The medical needs form does not serve as the application for services. If the signature date on the DHS-54 is **before** the date on the DHS-390, payment for home help services must begin on the date of the application.

Example: The local office adult services unit receives a DHS-54A signed on 1/18/2011 but a referral for home help was never made. The adult services staff enters a referral on ASCAP and mails an application to the client. The application is returned to the office with a signature date of 2/16/2011. Payment cannot begin until 2/16/2011, or later, if the provider was not working during this time period.

If the case is closed and reopened within 90 days with no changes in the client's condition, a new DHS-54A is not necessary.

ASM 115, pages 1-2 of 3

Therefore, pursuant to the above policy, an applicant must provide a medical needs form completed by enrolled Medicaid provider and certifying a medical need for services in order to receive HHS.

Here, after requesting additional medical information, ASW Helwig received a medical needs form signed by Appellant's physical therapist on [REDACTED] (Respondent's Exhibit A, page 11).

In that medical needs form, Appellant's physical therapist checked "NO" when asked to certify that Appellant has a medical need for assistance with any of the personal care tasks listed on the form. (Respondent's Exhibit A, page 11).

Appellant testified that his physical therapist is not his doctor and is unaware of all of Appellant's needs. However, as described in the above policy, a physical therapist is an appropriate medical provider to complete the medical needs form. See ASM 115, page 1 of 3. Moreover, Appellant fails to explain why the physical therapist would be unaware of Appellant's physical capabilities.

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No one disputes that Appellant is still recovering from surgery, but the mere fact that he is still recovering does not justify HHS. The requirements for HHS are clear and Appellant did not satisfy that criteria as he failed to provide a medical needs form certifying a continuing need for HHS. Accordingly, per policy, Appellant no longer met the criteria for HHS and his services must be terminated.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that, the Department both properly authorized [REDACTED] per month HHS between [REDACTED] and [REDACTED] and terminated Appellant's HHS on [REDACTED]

IT IS THEREFORE ORDERED THAT:

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

Steven Kibit

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

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

SK/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.