

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

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IN THE MATTER OF:

██████████,

Appellant

Docket No. 2013-8945 HHS
Case No. ██████████

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 ██████████. ██████████, son, represented the Appellant. ██████████ Appeals Review Officer, represented the Department. ██████████, Adult Services Worker ("ASW"), appeared as a witness for the Department.

ISSUE

Did the Department properly reduce the Appellant's Home Help Services ("HHS") hours for eating assistance?

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.
2. The Appellant has been diagnosed with multiple impairments including: hypertension, history of brain tumor status post partial excision, stroke with hemiparesis, expressive aphasia, dementia, chronic kidney disease, depression, and hyperlipidemia. (Exhibit 1, pages 4 and 16)
3. The Appellant had been receiving HHS for assistance with many activities, including eating. (Exhibit 1, page 19; ASW Testimony)
4. On ██████████, the ASW went to the Appellant's home and completed an in-home assessment for a review of the Appellant's HHS case. The Appellant's daughter in law was present. The ASW discussed the Appellant's abilities and needs for assistance. It was reported that the Appellant can feed herself most of the time and can drink on her own, but needs help with cutting foods and sometimes if she is having a bad day

they feed her. (Exhibit 1, page 13; ASW Testimony)

5. Based on the available information, the ASW concluded that the Appellant's HHS hours for eating should be reduced from 44 minutes 7 days per week to 22 minutes 4 days per week. (Exhibit 1, page 19; ASW Testimony)
6. On [REDACTED], the Department sent the Appellant an Advance Action Notice, which informed her that effective [REDACTED] the HHS case would be reduced to \$ [REDACTED] based on the report that less assistance is provided with eating. (Exhibit 1, page 5)
7. On [REDACTED], the Department sent the Appellant a second Advance Action Notice, which informed her that effective [REDACTED] the HHS case would be suspended unless a medical verification form is received from her doctor. (Exhibit 1, pages 10-12)
8. The Department has received the medical verification form and the Appellant's HHS payments were put back on. (ASW Testimony)
9. On [REDACTED], the Appellant's request for hearing was received by the Michigan Administrative Hearing System. (Exhibit 1, pages 3-5)

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.

*Adult Services Manual (ASM) 105,
11-1-2011, Page 1 of 3*

Adult Services Manual (ASM 120, 5-1-2012), 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 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.

*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.*

The Appellant had been receiving HHS for assistance with activities, including eating. (Exhibit 1, page 19; ASW Testimony) On [REDACTED], the ASW went to the Appellant's home and completed an in-home assessment for a review of the Appellant's HHS case. The Appellant's daughter in law was present. The ASW discussed the Appellant's abilities and needs for assistance. It was reported that the Appellant can feed herself most of the time, and can drink on her own but needs help with cutting and sometimes if she is having a bad day they feed her. Based on the available information, the ASW concluded that the Appellant's HHS hours for eating should be reduced from 44 minutes 7 days per week to 22 minutes 4 days per week. (Exhibit 1, pages 13 and 19; ASW Testimony)

The Appellant disagrees with the reduction. The Appellant's son testified he is the Appellant's primary caregiver. The Appellant's son was not available the day of the ASW's home visit and understood that his wife was not in the room for the ASW's entire home visit. The Appellant stated his mother is rarely able to eat on her own, she wastes most of her food trying to feed herself, but he tries to allow her some independence. The Appellant receives both prompting to eat on her own as well as hands on assistance feeding her to be sure she gets enough nourishment. The Appellant has had multiple strokes and can not use her left hand. The Appellant is right handed. The Appellant also has dementia and is not a reliable source of information. Since the home visit, the Appellant's condition has gotten significantly worse; she can not eat regular foods. The Appellant only eats soft foods now and tends to hold food in her mouth and not chew. (Son Testimony)

The Department provided sufficient evidence to support the reduction to the Appellant's HHS hours for eating based on the information available at that time. The ASW provided credible, detailed case notes and testimony that she was told the Appellant mostly ate on her own during the [REDACTED] home visit. The Appellant's daughter in law was not present to provide any testimony of what was reported at the home visit. The Appellant's son provided testimony regarding the Appellant's needs for assistance, but he was not present for the ASW's home visit assessment. Further, the recent changes in the Appellant's condition can not be considered in reviewing the action taken in [REDACTED]. Accordingly, the reduction of the Appellant's HHS hours for eating is upheld based on the information available to the ASW at that time.

At any time, the Appellant can provide updated medical verification of any changes in her condition, functional abilities and needs for assistance for consideration toward her current and ongoing HHS authorization.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly reduced the Appellant's HHS hours for eating assistance 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

cc:

[REDACTED]

Date Mailed: 3/5/13

***** 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.