

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH
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IN THE MATTER OF:

Docket No. 14-009569 HHS
Case No. [REDACTED]

[REDACTED]

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 Appellant's request for an hearing.

After due notice, a hearing was held on [REDACTED].

Appellant personally appeared but does not speak any English. Appellant testified at times through an interpreter. Appellant was represented by daughter and caretaker, [REDACTED].

[REDACTED], Appeals Review Officer, represented the Department. [REDACTED], Adult Services Worker appeared as a witness for the Department. No Adult Services Supervisor appeared.

The Department requested an interpreter approximately 20 minutes before the scheduled hearing, and, on its own accord, obtained an Arabic interpreter from [REDACTED].

ISSUE

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

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 [REDACTED] year old female beneficiary of the Medicaid Program administered by the State of Michigan. Appellant is a beneficiary of the SSI program.
2. At all relevant times, Appellant had been a recipient of a HHS grant in the amount of \$ [REDACTED]. (Exhibit A.20)

3. On ██████████ the ASW conducted a review of Appellant's case by doing an in-home assessment. Appellant's caregiver, representative was not present. (ASW Testimony) The ASW's notes regarding the visit state in part: "...customer answered the door and spoke very good English. She said she can toilet herself, eat herself, and was observed answering the door without her walker. ██████████ [caregiver] said she had an errand to run but that she missed me. Worker discussed services provided, she said she does toilet and that her mother is embarrassed to say she wears diapers...she does eat herself but she has to clean her mouth...she said that her wheelchair is being repaired ..." (Exhibit A.15)
4. The Department's Exhibit A does not contain the new rankings.
5. On ██████████ the Department issued an Advance Negative Action Notice informing Appellant stating that "...Your HHS hours will be reduced to 59.42 as mobility, transferring, and eating has [sic] been removed from your time and task." (Exhibit A.7)
6. A progress note of ██████████ makes reference to an updated Medical needs form-DHS-54A the note states was signed ██████████. (Exhibit A.14) No such document was made part of the evidentiary packet or offered as evidence as the administrative hearing.
7. Appellant's caregiver testified that Appellant's wheelchair was in for repairs at the time of the assessment.
8. On ██████████, Appellant filed a Hearing Request.

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.

Medical Need Certification

Medical needs are certified utilizing the DHS-54A, Medical Needs form and must be completed by a Medicaid enrolled medical professional. Completed DHS-54A or veterans administration medical forms are acceptable for individual treated by a VA physician; see ASM 115, Adult Services Requirements.

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, 5-1-12, 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.

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

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.

The purview of an administrative law judge (ALJ) at an administrative hearing is to make a determination as to whether the Department acted correctly under its policy and procedure at the time the Department made its determination, and, to ensure that the determination is not contrary to law. Generally, at administrative hearings, the Department proceeds first in order to explain the action taken, the evidence relied on in taking that action, and to explain the authority relied on in taking the action. However, the Appellant has the burden of proof. The burden of proof at an administrative hearing is by a preponderance of evidence standard. In Michigan, administrative hearings employ the Circuit Court Rules of Evidence as far as reasonably they can be followed. If the Appellant rebuts the Department's evidence, the burden may shift.

After a careful review of the substantial and credible evidence of the whole record, this administrative law judge (ALJ) finds that the Department's action is not supported by credible evidence of record on the grounds that the written evidence of the ASW, and the testimony by the Department, is inconsistent, ambiguous, and not credible, for the reasons set forth below.

Most critical, the Department requested an interpreter approximately 20 minutes before the scheduled hearing on the grounds that the Appellant did not speak English. At the same time, the Department submitted evidence of an in-home assessment with the Appellant, without her caregiver present, stating that "the client spoke very good English." (Exhibit A.15)

At the administrative hearing, Appellant was testified under oath through an interpreter that she did not speak English.

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The Department's action here-the reduction in hours-is based primarily on the in-person assessment in this case-it is critical in reducing Appellant's HHS grant. That evaluation states that Appellant speaks "very good English" and yet, the Department claimed prior to the administrative hearing that a translator was necessary as Appellant did not speak English. (Exhibit A.15) These two statements by the Department are irreconcilable.

Moreover, the Department's notes from the assessment also state that Appellant's caregiver made a number of statements to the ASW at the visit. (Exhibit A.15) However, the ASW testified at the administrative hearing that the caregiver was not present at the visit.

In addition, the documentary evidence presented by the Department was ambiguous, inconsistent, and missing documents. The negative action notice states "your home help hours have been reduced to 59.42..." (Exhibit A.7) However, Exhibit A.21 and 22 indicates that the hours are \$ [REDACTED]. The notes entered by the Department made reference an DHS-54A signed [REDACTED]. However, there was no DHS-54A with a physician's signature of [REDACTED]. Further, the Department failed to include and presumably failed to complete a ranking chart for each ADL and IADL, with corresponding justifications for each ranking-that is the basis on which the reduction presumably was made. The chart in the evidentiary packet was from the prior assessment before the reduction at issue herein. (Exhibit A.13)

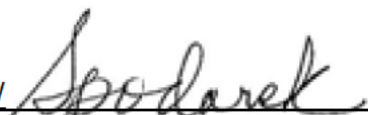
In sum, the claim by the Department that Appellant did not speak any English requiring an interpreter, while at the same time, submitting a written assessment that begins with "the client spoke very good English" taints the overall credibility of the entire Department's evidentiary packet. Under general rules of evidence, and the duty to which this ALJ is charged with, and under the rules of evidence, the Department's action is not supported by credible and substantial evidence and must be reversed.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department improperly reduced Appellant's HHS case.

IT IS THEREFORE ORDERED THAT:

The Department's decision is REVERSED. The Department is ordered to reinstate the prior level of benefits in Appellant's case from the date of reduction, and issue any supplemental benefits to Appellant to which she is entitled.

/s/ 
Janice Spodarek
Administrative Law Judge
for Nick Lyon, Director

[REDACTED]

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Michigan Department of Community Health

JS/ [REDACTED]

cc: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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Date Signed: [REDACTED]

Date Mailed: [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.