

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

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IN THE MATTER OF:

██████████

Docket No. 14-013507 HHS

Case No. ██████████

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 a hearing.

After due notice, a hearing was held on ██████████. Appellant did not appear. Appellant's representative-██████████, daughter, appeared and testified.

██████████, Appeals Review Officer, represented the Department of Community Health. ██████████, Adult Services Worker (ASW), and ██████████, Adult Services Supervisor, appeared as witnesses for the Department.

**ISSUE**

Did the Department properly open Appellant's Home Help Services hours (HHS) at \$██████████?

**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 ██████ year-old female beneficiary of the Medicaid and SSI welfare programs.
2. On ██████ the Department received a referral for HHS on behalf of Appellant. (Exhibit A; Testimony).
3. Appellant diagnoses include CHF, HTN, DM, Diabetic, neuropathy, chronic bilateral leg pain foot amputations, insulin dependent, hemodialysis. (Exhibit A.12).
4. On ██████ the Department conducted an initial in home assessment with Appellant and her care provider for an initial interview. The Department understood that Appellant lives with 3 adult children that was later corrected to be 1 adult child. The Department ranked Appellant at a 4 for bathing, transferring, housework, laundry, shopping, and meal preparation; Appellant was ranked at a 3 for grooming, mobility, and medication.

(Exhibit A.17-18).

5. The Department prorated Appellant's IADLs based on a shared living arrangement.
6. On ██████████ the Department issued an Advanced Negative Action Notice stating that Appellant's HHS case was approved and open at \$ ██████████ [sic] per month. (Exhibit A.13).
7. On ██████████, Appellant's Request for Hearing was received by the Michigan Administrative Hearing System. Appellant's hearing request complains about the conduct of a state employee, requests a different worker, and asks that the case be reviewed. (Exhibit A.4 and 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.

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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 1-4 of 5 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.

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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.

*Adult Services Manual (ASM) 120, 5-1-2012,  
Pages 1-5 of 5*

Here, evidence of record indicates that the Department prorated Appellant's IADLs as required by policy where necessary. However, the evidentiary packet did not contain the applicable policy. That policy is cited above.

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Here, the Appellant's representative requested an administrative hearing to lodge a number of complaints and disagreements with the conduct of a state employee, and, argued that her case was not handled in a professional manner. Administrative Law Judges have no jurisdiction over the conduct of a state employee. Appellant may file a complaint at the local office, and/or at the central office in Lansing, Michigan.

Appellant's remaining issue(s) is regarding the amount of the HHS grant at case opening. Under the above cited authority, policy gives the individual ASW who is making the assessment extra-ordinary discretion.

Unrefuted evidence is that the ASW was not aware that Appellant has a wheelchair. Appellant complained that the ASW did not conduct a thorough walk-thru of Appellant's apartment; else she would have seen the wheelchair. Based on the mobility criteria, a client who needs minimal hands-on assistance specific to maneuvers with a wheelchair is rated at a 3. (Exhibit A.32). A review of the rankings show that Appellant was in fact ranked at a 3 for mobility. (Exhibit A.18). Moreover, the HHS program does not allow for hours for transportation for an individual outside of the home. Thus, in conjunction with the discretionary purview of an ASW, and, the 3 ranking for minimal wheelchair maneuvers, this ALJ does not find the failure of the ASW to be appraised of the wheelchair fatal in this case-the rank is credible and substantial based on the evidence for the mobility criteria under ASM policy.

As to Appellant's remaining argument, that Appellant needs more hours, Appellant was in fact approved more hours that what was allowed in her grant due to the proration policy. There was no evidence at hearing that Appellant and her adult child meet the exception to proration as identified in ASM 120, page 5 cited above.

As to the failure of the Department to include the proration policy in its evidentiary packet, under general evidentiary considerations, parties are expected to disclose all evidence ahead of time to give each side an opportunity to prepare for an evidentiary hearing. However, this general evidentiary rule is one that general applies to specific or documentary evidence. General department policy and procedure is public and available on the internet and/or local offices. Moreover, the actual documentary evidence does in fact indicate that proration was done in Appellant's case calculation. (See Exhibit A.15 Thus, this ALJ does not find the failure to include proration policy in the packet a ground on which to reverse the Department.

The purview of an administrative law judge (ALJ) is to review the Department's action and to make a determination if those actions are in compliance with Department policy, and not contrary to law. The reviewing forum is required to focus on the action taken at the time it took the action.

After a careful review of the credible and substantial evidence on the whole records, this ALJ finds that the Department's actions were in compliance with its policy, and supported by the documentary and testimonial evidence taken as a whole at the time the Department made its determination. Thus, the Department's reduction is upheld.



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It is noted that Exhibit A and the Department's documentary packet contains 3 different amounts for Appellant's HHS grant: ARO statement found on p. 2 states that Appellant was approved at \$ [REDACTED]; p 8 states \$ [REDACTED]; the notice found on p. 13 states \$ [REDACTED]; p. 16 states \$ [REDACTED]; and p 19 states \$ [REDACTED]. First, the ARO statement appears to be error. As to the other amounts, it is assumed that Appellant was opened based on \$ [REDACTED] pursuant to Exhibit A.19 as it appears to be the computerized issuance amount. As this amount is the higher of the two, this ALJ will not find this to be reversible error; however, if in fact the correct amount is not the higher one of \$ [REDACTED], then the Department is advised to make a correction.

**DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department's allotment of Appellant's HHS grant was correct based on the available evidence.

**IT IS THEREFORE ORDERED THAT:**

The Department's decision in this case is hereby UPHELD.

/s/ Janice Spodarek  
Janice Spodarek  
Administrative Law Judge  
for Nick Lyon, Director  
Michigan Department of Community Health

JS/ [REDACTED]

cc: [REDACTED]

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 March 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.