

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH
P.O. Box 30763, Lansing, MI 48909
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IN THE MATTER OF:

██████████,

Appellant

Docket No. 14-015780 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 ██████████. Appellant's guardian, ██████████, personally appeared and testified

██████████, Appeals Review Officer, represented the Department. ██████████, Adult Services Supervisor, appeared as a witness for the Department. The Adult Services Worker did not appear. No one appeared as a witness at the administrative hearing who had personal knowledge of this case.

ISSUE

Did the Department properly close Appellant's Home Help Services ("HHS") case?

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 male who is a beneficiary of the Medicaid Program administered by the State of Michigan. Appellant is a beneficiary of the SSI program.
2. Testimony indicates that Appellant had a ██████████ referral. The Department testified that the referral was late and "was not done until ██████████." (Exhibit A; Testimony)
3. On ██████████, the Department conducted an initial assessment. Following, evidence in the case indicates that Appellant's case was opened retro-active to the referral date at \$ ██████████ per month; no notices were from this assessment were included in the evidentiary packet. (Exhibit A).
4. On 1 ██████████ the Department issued a home visit letter to Appellant's

Guardian scheduling a home visit for ██████████. Appellant's Guardian received the letter on the evening of ██████████, after returning home from work, after business hours. Appellant's Guardian was scheduled to work in the morning, and could not arrange for time off work without notice. Appellant was scheduled for school, and without notice, Appellant's Guardian could not pull Appellant out of school the following morning. Appellant's Guardian attempted to contact the ASW but was unable to leave a message on the voice mail of the ASW. (Exhibit A.6-9; Testimony)

5. On ██████████ the Department issued an Advance Negative Action Notice informing Appellant that his HHS case will close due to being unable to determine the continuation of HHS. (Exhibit A.6)
6. The ASW who had personal knowledge of this case was not available at the administrative hearing for testimony and/or cross-examination.
7. On ██████████, Appellant's Guardian 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) 105,
11-1-2011, Pages 2-3 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.

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.

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- 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.

In this case, the facts show that the Department composed a letter dated [REDACTED], that was mailed by the DHS, scheduling Appellant for an in-home assessment on [REDACTED]. Appellant's Guardian credibly testified that he received the letter on the eve of the appointment day, and was unable to arrange for a vacation day off work, and, unable to arrange to pull Appellant out of school the very next day without notice, in order to be available for the visit. The Department questioned Appellant's Guardian as to if he contacted the Department. Appellant's Guardian credibly testified that in fact he did, but as the office was closed, he was only able to call the ASW at the phone number on the letter that evening. Appellant's Guardian again credibly testified that he was not able to leave a phone message on the ASW's voice mail as it was not accepting voice mails. The ASW was not in attendance at the administrative hearing; Appellant was a credible witness.

As already noted, the ASW who had personal knowledge of this case was not available at the administrative hearing for testimony and/or cross-examination. It is unclear if the ASW who scheduled the home visit was the ASW who conducted the late [REDACTED] assessment as Exhibit A.10 would seem to indicate that the case was reassigned. However, the full case record as to any prior assessments was not in evidence at the administrative hearing. The Department did not have Appellant's file. Appellant's representative testified that he had a prior assessment cancelled by the Department when he had already scheduled a vacation day off work. While there was some testimony regarding a prior assessment(s), the facts surrounding the prior assessment(s) is not controlling to the facts herein.

The Department presented no policy or procedure that would indicate how much notice an ASW is required to give when scheduling an in-home visit. In light of such, the evidentiary standard to apply would be a "reasonable person" standard or what would be considered reasonable by most rational persons under similar circumstances. To issue a letter to a person who works that could reasonably be expected to arrive on the

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eve of the appointment, or even 1 day ahead, is not reasonable. Nor is it reasonable to inform a client to call the ASW at a phone number that is not receiving voice mail. Appellant was virtually given no notice; the Department knew or should have known Appellant's Guardian was employed (as this information would be in the file that was not at the administrative hearing), Appellant was a student with special needs and arrangements at school. Appellant credibly rebutted the Department's evidence. The worker was not present as a witness, and not subject to cross-examination. Appellant met his burden of proof. The Department is reversed.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED THAT:

The Department's decision is REVERSED. The Department is ordered to initiate the following: reinstate Appellant's HHS case to the prior level of benefits, and issue any supplemental benefits to Appellant to which he is entitled, in accordance with its policy and procedure, if eligibility otherwise exists.

/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 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.