

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. 2014-15113 HHS
Case No. [REDACTED]

[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 the Appellant's request for a hearing.

After due notice, a hearing was held on [REDACTED]. Appellant did not appear. Appellant was represented by his Guardian Attorney, [REDACTED]. [REDACTED], Appellant's primary care provider, appeared as a witness.

[REDACTED], Appeals Review Officer, represented the Department. [REDACTED], Adult Services Worker ("ASW"), and [REDACTED], Adult Services Supervisor, appeared as witnesses for the Department.

ISSUE

Did the Department properly issue an Negative Action Notice denying Appellant's Home Help Services ("HHS") application on the grounds that Appellant does not have an activity of daily living (ADL) rating of 3 or more?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. At all relevant times, Appellant has been and continues to be beneficiary of the Medicaid Program administered by the State of Michigan. Appellant is a DAC. Appellant is a [REDACTED] year old male.
2. Appellant previously had a HHS case open for 39 hours and 8 minutes. Appellant's previous case closed in [REDACTED] due to the ASW being unable to make face-to-face contact with Appellant.

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3. Appellant's mother previously opposed assistance for Appellant, was protective, guarded, and resistant to allowing anyone into the home where she resided with Appellant. Appellant's mother stopped his education at 3rd grade. Appellant's mother was removed from the home and psychiatrically institutionalized. Appellant's mother has not been in the home since ██████████
██████████.
4. Appellant is intellectually disabled (full Scale IQ of 53), and, developmentally disabled (autism). The ASCAP medical module was not submitted as evidence.
5. A ██████████ DHS-54A was completed by a visiting physician, who was not Appellant's primary care physician. That form indicates that Appellant needs assistance with IADLs but does not have any ADLs circled. Appellant's hearing request was accompanied by a letter from his primary care physician indicating that Appellant needs assistance with toileting, bathing, grooming, dressing, transferring, medications, meal preparation, shopping, laundry, and light housework. (Exhibit A.5)
6. On ██████████ or ██████████ (ASW Testimony) the ASW visited for approximately 30 minutes with the provider, and on the "following day" for 10 minutes with Appellant.
7. The ASW testified but did not provide documentary evidence of the adult services comprehensive assessment, including the narrative, rankings, and the medical module. Written documentary evidence regarding the ASCAP module entries were not submitted before or at hearing, and could not be examined or cross-examined.
8. On ██████████ the Department issued a notice of denial informing Appellant that his HHS application was denied for the following reason: "...functional assessment, combined with case history and all prior assessments, indicates that client does not have a need for hands-on assistance with an ADL. Medical Needs form (HHS-54A) completed by client's primary care physician, also indicates that client has no medical need for ADL assistance." (Exhibit A.10)
9. Appellant eats 4 times a day, and due to choking and regurgitation issues needs his food cut up. Appellant needs assistance bathing, including washing his entire body; Appellant cannot cut his toe nails or wash his feet; Appellant is ██████████ and weighs ██████████ pounds. Appellant has a rash between his legs and needs assistance with applying powder. Appellant needs assistance with cleaning himself after bowel accidents.
10. 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) 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.
- Money management such as power of attorney or representative payee.
- Home delivered meals.

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- 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.

First, regarding jurisdiction, it is noted that Appellant's Guardian was identified on the hearing request as a representative. MAHS failed to identify Appellant's guardian and attorney in Appellant's file for appeal and in the Notice of Hearing. At hearing, the Department indicated that it had in its possession legal documentation of the court appointment and did not object to proceeding.

At hearing, the ASW testified that he did not find any ADLs indicated except for bathing. As to bathing, the ASW indicated that while hands on assistance was indicated, "no reason was given why any hands on was required." As noted in the Findings of Fact, the Department failed to submit a complete evidentiary packet regarding the entries/documentation into the ASCAP system documenting the functional assessment(s) by the ASW when it was completed in ██████████ or ██████████ ██████████.

Appellant's provider on the other hand, raised a number of rebuttals regarding representations made to the Department. Appellant's provider indicated that she represented many hands on activities as to bathing, washing, cleaning, toileting, dressing etc.

After a careful review of the credible and substantial evidence on the whole record, this ALJ finds that the Department failed to meet its burden of going forward. In the alternative, Appellant's witness sufficiently rebutted the Department's representations. As already noted, the evidence presented by the Department was mostly testimonial. While the Department's testimony was credible, Appellant sufficiently rebutted many statements that could not be cross checked with any narrative entries on the date of assessment as none were submitted as evidence.

It is noted that the notice of denial was sufficiently documented in the packet. That exhibit notes that the denial was due in part to Appellant's "primary care physician" failing to document any ADLs. Credible and substantial evidence on the record indicates that the physician who completed the form was not in fact Appellant's primary care physician. Moreover, Appellant had evidence at hearing from Appellant's primary care physician indicating that Appellant does need assistance with ADLs as well as IADLs.

In this case, there really are a number of reasons to require a new assessment, including the compromised evidentiary packet, Appellant's history regarding his mother, the nature Appellant's mental impairments, the lack of a "primary care" physician's

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medical needs form (contrary to the denial notice). Certainly, the Department's failure to meet its burden of going forward is sufficient by itself.

The Department's denial 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 denied Appellant's HHS case.

IT IS THEREFORE ORDERED THAT:

The Department's decision is REVERSED. The Department is ordered to initiate: a re-assess Appellant's case in accordance with its policy and procedure; to communicate with Appellant's guardian; to give Appellant an opportunity to complete the DHS-54A with his primary care physician; to issue a written notice of case action. Appellant's initial referral date shall be preserved-Appellant will be entitled to benefits from the date of referral as permitted under policy and procedure, if eligibility is otherwise shown.

Should Appellant disagree with a new assessment, Appellant shall be entitled to an administrative hearing to review eligibility back to the initial referral date.

/s/
Janice Spodarek
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

cc:

Date Signed: March 7, 2014

Date Mailed: March 10, 2014

***** 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.

[REDACTED]

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