

**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. 2014-20529 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 the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. Appellant and Appellant's provider (██████████) appeared and offered testimony. ██████████, Appeals Review Officer, represented the Department of Community Health. ██████████, 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?

Did the Department properly suspend the Appellant's 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. From ██████████ through ██████████, the Department periodically sent the Appellant provider logs. The logs were mailed to the Appellant in the ordinary course of business. (Testimony)
2. On ██████████, a Medical Needs form (54A) was submitted to the Department on behalf of the Appellant. The 54A indicated the Appellant only needed assistance with bathing, mobility, laundry and housework. (Exhibit A, p. 27; Testimony)
3. On ██████████, the ASW met with the Appellant and the Appellant's former provider (April Hart) for a reassessment. During the reassessment, the ASW covered all Activities of Daily Living (ADL's) and Instrumental Activities of Daily Living (IADL's) with the Appellant and the Provider. During the assessment, the Appellant told the ASW she doesn't get her nails done anymore and was growing her hair out due to depression related issues. (Exhibit A, pp. 21, 22; Testimony)

4. On ██████████, ██████████ called and spoke with the ASW. ██████████ told the ASW she no longer trimmed and painted the Appellant's nails and did not touch the Appellant's medications. (Exhibit A, p.24; Testimony)
5. On ██████████, the ASW called and spoke with the Appellant regarding her conversations with ██████████ the day before. The Appellant told the ASW her daughters assisted on the weekends and also helped in the preparation of meals. The Appellant also explained that ██████████ did not handle her medications and was confused during the assessment. (Exhibit A, p. 25)
6. As of ██████████, the Appellant was receiving HHS for bathing, grooming, dressing, mobility, housework, laundry, shopping, meal preparation and medication. (Exhibit A, p. 51; Testimony)
7. On or around ██████████, the ASW determined the Appellant no longer needed assistance with medications and needed less time allocated to meal preparation and grooming. The ASW based this determination off of the assessment on ██████████, ██████████, corresponding 54A and follow up conversations with ██████████ and the Appellant on ██████████ and ██████████. (Testimony)
8. On ██████████, the Department sent the Appellant an Advance Negative Action Notice. The notice indicated the Appellant's HHS dollar amount authorized was being reduced to \$██████████. The notice indicated to return the provider logs and to report any changes within 10 days. (Exhibit A, pp. 7-10; Testimony)
9. On ██████████, the Department sent the Appellant an Advance Negative Action Notice. The notice indicated the Appellant's HHS case was being suspended for failure to return provider logs for the months of ██████████ through ██████████ and from ██████████ through ██████████. (Exhibit A, pp. 11-14); Testimony)
10. On ██████████, MAHS received from the Appellant a request for hearing. (Exhibit A, pp. 4-6)

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.

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.

*ASM 101,
12-1-2013, Page 1 of 4.*

ASM 105, 12-1-2013, 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.

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.

ASM 105,
12-1-2013, Pages 1-3 of 3

ASM 120, 12-1-2013, pages 1-5 of 5 addresses the adult services comprehensive assessment and responsible relatives:

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.

Responsible Relatives

Activities of daily living may be approved when the responsible relative is **unavailable** or **unable** to provide these services.

Note: Unavailable means absence from the home for an extended period due to employment, school or other legitimate reasons. The responsible relative must provide a work or school schedule to verify they are unavailable to provide care. **Unable** means the responsible person has disabilities of their own which prevent them from providing

care. These disabilities must be documented/verified by a medical professional on the DHS-54A, Medical Needs form.

Do **not** approve shopping, laundry, or light housecleaning, when a responsible relative of the client resides in the home, **unless** they are unavailable or unable to provide these services. Document findings in the general narrative in ASCAP.

Example: Mrs. Smith is in need of home help services. Her spouse is employed and is out of the home Monday thru Friday from 7a.m. to 7p.m. The specialist would not approve hours for shopping, laundry or house cleaning as Mr. Smith is responsible for these tasks.

Example: Mrs. Jones is in need of home help services. Her spouse's employment takes him out of town Monday thru Saturday. The specialist may approve hours for shopping, laundry or house cleaning.

*ASM 120, 12-1-2013,
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.

ASM 101, 12-1-2013,
Pages 3-4 of 4

Provider logs are covered by ASM 135.

PERSONAL CARE SERVICES PROVIDER LOG (DHS-721)

- Each individual provider must keep a log of Home Help Services delivered. The DHS-721 is used for this purpose.
- Tasks on the provider logs are automatically marked with an X when printed from ASCAP based on the client's home help functional assessment.
- The provider must indicate what services were provided and on which days of the month.

Docket No. 2014-20529 HHS
Decision and Order

- The client and the provider must sign the log when it is completed to verify that the services approved for payment were delivered.
- The log must be submitted to the local office quarterly. Provider logs must be received within 10 business days after the last service date on the log. Failure to do so will result in suspension of payment.
- The Adult services Specialist must initial and date the log upon receipt, demonstrating review of the log.
- Retain the log in the client's case record.
- A separate log is required for each provider.
- Incomplete logs must be returned to the client/provider for completion.

ASM 135, 12-1-2013,
Pages 4, 5

The ASW testified she reduced the amount of time allocated to grooming, meal preparation and medication based upon her assessment, 54A and phone conversations with the Appellant and the Appellant's former provider. Specifically, the ASW reduced the Appellant's time for medication completely because both the Appellant and the provider indicated there was no assistance with medication. The ASW reduced the grooming from 9 minutes a day 7 days a week to 9 minutes a day 4 days a week, based on the provider no longer trimming the Appellant's nails, painting them and no longer grooming the Appellant's hair. The ASW reduced the Appellant's meal preparation from 50 minutes a day 7 days a week to 30 minutes a day 7 days a week based upon the Appellant's ability to prepare frozen meals as well as the Appellant's children and adult child preparing warm meals for the Appellant.

The Appellant's current provider and representative testified upon questioning that she no longer had a problem with the new allocation of time for preparing meals. The Representative however, argued that she assisted the Appellant with her medications and grooming by placing medications in a container and provided nail trimming, painting and hair grooming. At no point in time between the assessment and the hearing did the provider or the Appellant notify the Department of the changes as required by policy.

Based on the evidence presented the Appellant has failed to prove, by a preponderance of the evidence, that she requires more HHS than she was approved for. If in fact, the Appellant's situation has changed, the Appellant should notify the Department of those changes.

Docket No. 2014-20529 HHS
Decision and Order

In regards to the provider logs issue, the Appellant and the Representative argued the Department never provided them with any logs and never instructed them on the completion of those logs.

The Department testified the logs were sent to the Appellant via mail in the ordinary course of business.

Because the Appellant alleges to have not received the logs, this issue concerns the application of "the mailbox rule."

Under the mailbox rule "a letter mailed in the due course of business is received."¹ Such evidence is admissible without further evidence from the records custodian that a particular letter was actually mailed.² "Moreover, the fact that a letter was mailed with a return address but was not returned lends strength to the presumption that the letter was received."³ The challenging party may rebut the presumption that the letter was received by presenting evidence to the contrary.⁴

The Department has produced sufficient evidence of its business custom with respect to addressing and mailing of the notices in question. Under the mailbox rule, the mere execution of the delivery in the usual course of business reputably presumes subsequent receipt by the addressee.⁵ The Department has produced sufficient evidence of its business custom with respect to the mailing of the logs allowing it to rely on this presumption. The Appellant, on the other hand, has not come forward with sufficient evidence to rebut the presumption.

The Appellant failed to meet her burden of proof of showing by a preponderance of the evidence that the Department erred in suspending her HHS Payments, because at the time the payments were suspended the Department had not received the completed logs. Therefore, I find the Department's actions were proper at the time and must be affirmed.

Accordingly, I find evidence to affirm the Department's actions in these matters.

¹ *Good v Detroit Automobile Inter-Insurance Exchange*, 67 Mich App 270 (1976).

² *Good supra* at 275.

³ *Id* at 276.

⁴ See *id.*

⁵ *Good v Detroit Automobile Inter-Insurance Exchange*, 67 Mich App 270 (1976).

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly determined the Appellant's HHS hours and properly suspended the Appellant's HHS payments.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

Corey A. Arendt
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health


cc: 

Date Signed: February 19, 2014

Date Mailed: February 19, 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 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.