

**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:

██████████,

Appellant

Docket No. 14-016009 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 Appellant's request for a hearing.

After due notice, a telephone conference hearing was held on ██████████. Appellant did not appear. Appellant's hearing representative, daughter, and caregiver appeared and testified on behalf of Appellant.

██████████, Appeals Review Officer, represented the Department. ██████████, Adult Services Supervisor (ASS) appeared as a witness on behalf of the Department.

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 female who is a beneficiary of the welfare Medicaid and SSI programs.
2. Appellant's diagnoses include low back pain, generalized anxiety, musculoskeletal pain, IDDM, HTN, high cholesterol, and obesity. (Exhibit A.14).
3. Prior to the action herein, Appellant had an HHS case open at \$██████████ per month. (Exhibit A.17).
4. On ██████████ the Department issued a home visit letter scheduled for ██████████ due to the yearly review. (Exhibit A.5).
5. On ██████████ the Department issued a closure notice stating that the worker attempted a home call but Appellant was not home and her

whereabouts are unknown. (Exhibit A.7).

6. On ██████████ Appellant's daughter had a phone conversation with the ASW who indicated to the daughter that he will make an appointment the following week. (Testimony).
7. On ██████████ the ASW issued a 2nd home visit letter for ██████████. (Exhibit A.9).
8. On ██████████ the ASW issued an Advanced Negative Action Notice to close Appellant's case with an effective date of ██████████ on the grounds that "...the worker has made a number of attempted home calls and you have not been available for services. Unless you contact worker by the above date your case will be closed..." (Exhibit A.11).
9. On ██████████ Appellant's payments stopped due to the review not having been completed. On ██████████ the case closed. (Exhibit A).
10. On ██████████ MAHS received a request for an administrative hearing. MAHS scheduled the case for 1/20/15.
11. Sometime in August, Appellant's daughter had her mother move in with her. Appellant's mother continued to receive mail at her own residence.

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:

GENERAL

...Home help payments cannot be authorized prior to establishing Medicaid eligibility and completing a face-to-face assessment with the client.

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.

*Adult Services Manual (ASM) 105,
11-1-2011, Pages 1-3 of 3*

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.

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.

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

*Adult Services Manual (ASM) 101, 11-1-2011,
Pages 3-4 of 4.*

The Adult Services Requirements policy is found at ASM 115. This item addresses "Contacts" between the client and the ASW:

The specialist must, at a minimum, have a face-to-face interview with the client, prior to case opening, then every six months in the client's home, at review and redetermination.

Adult Services Manual (ASM) 115, 5-1-2013, Page 3 of 3.

In this case, the Department requests that the closure be upheld on the grounds that Appellant was not available for the yearly review home visits. Department evidence indicates that the ASW attempted 2 home visits, but Appellant was not home for either.

Appellant's hearing representative argues that she contacted the ASW numerous times and that he did not return her phone calls, had documentation of a ██████████ phone call on her notes icon on her i-phone, and that she changed her mother's address with the Department.

After a careful review of the credible and substantial evidence of record, this ALJ finds that Appellant did not meet her burden of proof by a preponderance of evidence standard for the reasons set for below.

At the hearing, Appellant's representative argued that the ██████████ phone call with the ASW, for which she had noted in her i-phone, is evidence in support of her case. Specifically, Appellant's representative argues that it shows that she had contact with the ASW and that the ASW was "to make an appointment next week." However, a review of the record does show that the ASW did, in fact, make an appointment-on ██████████ the ASW issued a home visit letter for ██████████ interview.

In response to Appellants argument that she made numerous phone calls to the ASW, the Department offered to give Appellant time to obtain copies of phone records to support her contention. However, Appellant's representative indicated that did not think that she could obtain the same, and thus, essentially declined.

Last, Appellant's representative argues that when her mother (Appellant) moved in with her in ██████████, Appellant's address was changed with the DHS. However, at the same time, Appellant's representative testified that her mother was still receiving mail during this time at the 'old' address. These 2 facts are difficult to reconcile-It does not make sense to put in a change of address when mail is still being delivered to the old address. Moreover, the hearing request form filed for this administrative hearing does not show Appellant's address as the "new address" purportedly reported to the DHS, but has her old address.

This ALJ must weigh all of the evidence and apply the preponderance of evidence burden of proof. This ALJ finds that Appellant, under these facts, was unable to meet the burden of proof as required by law, and thus, this ALJ must uphold the action here.

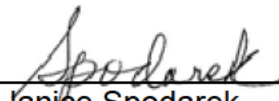
Appellant may reapply.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department's closure of Appellant's HHS application was correct based on the information available at the time of the closure.

IT IS THEREFORE ORDERED THAT:

The Department's decision is hereby AFFIRMED.



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

JS [REDACTED]

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

cc: [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.