

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES**

P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 373-4147

IN THE MATTER OF:

Docket No. 15-003471 HHS

██████████

██████████

██████████

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 appeared at the hearing. ██████████, Appellant's son and Authorized Hearings Representative, appeared on behalf of Appellant. ██████████, Appeals Review Officer, represented the Michigan Department of Health and Human Services (MDHHS or the Department or Respondent). ██████████, Adult Services Supervisor, and ██████████, Adult Services Supervisor, appeared as witnesses for the Department.

ISSUE

Did the Department properly propose to reduce Appellant's Home Help Services ("HHS")?

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 Medicaid beneficiary whose birthdate is ██████████. Appellant is ██████ years old.
2. Appellant has been approved for HHS since ██████████. (Respondent's Exhibit A page 17).
3. Appellant is diagnosed with arthritis of the knee and spine, bone spur in foot, gout, spinal surgery in ██████████, triple bypass in ██████, ovarian cancer ██████, spinal stenosis, cerebral gout, surgery to open arteries ██████, dementia, coronary artery disease, gastro esophageal reflux disease, urinary incontinence and a lumbar laminectomy. (State's Exhibit A page 18)

4. Appellant was approved for assistance with shopping, meal preparation, bathing, dressing, transferring, mobility, housework, laundry, toileting, grooming, eating, and medication. Appellant was approved for █████ hours █████ minutes of service per month of █████ (State's Exhibit A page 12)
5. On █████, a six month in home assessment was performed by the Adult Services worker with Appellant and her provider/son.
6. Appellant is currently approved for assistance with bathing, dressing, transferring, mobility, medication, housework, laundry, shopping, and meal preparation. Appellant is approved for █████ hours █████ minutes or total care costs of █████ (State's Exhibit A page 11).
7. On █████, the department sent Appellant an Advance Negative Action Notice stating that Appellant's HHS would be reduced effective █████ because per policy Appellant's case has been reduced to reflect the other individuals living in her home and need assistance. State's Exhibit A page 7)
8. On █████, Appellant's benefits were adjusted due the the department's failure to send a DHS-1212 form prior to taking a negative action. A 1212 was sent out and it was determined that Appellant's benefits would decrease as of █████
9. On █████, the Michigan Administrative Hearing System received a request for hearing to contest the department's negative action. (State's Exhibit A page 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.

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.*

A service plan must be developed for all independent living services cases. The service plan is formatted in ASCAP and interacts with the comprehensive assessment.

The service plan directs the movement and progress toward goals identified jointly by the client and specialist. **Service plans are to be completed on all new cases, updated as often as necessary, but minimally at the six month review and annual reassessment. ASM 130, pages 1-2.**

Service plan development practices will include the use of the following skills:

- **Listen actively** to the client.
- Encourage clients to **explore options** and select the appropriate services and supports.
- Monitor for **congruency** between case assessment and service plan.
- Provide the necessary supports to **assist clients in applying for resources**.
- Continually **reassess** case planning.
- Enhance/preserve the client's **quality of life**.

Monitor and document the status of all **referrals** to waiver programs and other community resources **to ensure quality outcomes**. ASM 130, page 2

Appellant's son and provider testified that he lives in the apartment with his mother because his mother cannot live alone. She has dementia. He stated that he should continue to receive payment for grooming because he combs and braids the Appellant's hair every day. He helps his mother in and out of the bath tub and washes her hair. He stated that he should continue to receive payment for eating because he cuts Appellant's food for her and prepares her meals. He sometimes has to help her eat because Appellant has tremors. He helps Appellant to dress and he helps change her pull ups as she has incontinence and has worn the diaper like pampers for the last five years. Appellant's provider testified that he should receive payment for toileting. Although Appellant can go to the bathroom much of the time, he must clean her back side because she is incontinent. He makes meals ██████ times per day and has to remind his mother to eat because she has dementia. He sometimes washes clothing daily because Appellant is incontinent and soils her clothing and her sheets regularly. He provides Appellant with her medications and has to prompt her to take them and make certain that she takes her medication. Appellant's condition has not improved and has, in fact, worsened.

A medical needs form dated [REDACTED], signed by Appellant's physician indicates that Appellant requires a walker for ambulation and she has a certified medical need for assistance with eating, toileting, bathing, grooming, dressing, transferring, mobility, taking medications, meal preparation, shopping, laundry and housework.

The department Adult Services Worker indicated that she went to the house and that Appellant went to the bathroom by herself and that she heard Appellant's provider tell appellant to stop combing her hair and come meet with the worker for the in home assessment, but she did not see Appellant groom herself. The worker testified that the department records indicate that several people who actively receive benefits have Appellant's address and that the provider himself uses a cane which gave her concerns over how much help the provider actually gives the Appellant. The worker did not provide documentation evidence that anyone else resided in the apartment with Appellant.

Based on the evidence presented, it became clear to this Administrative Law Judge that there was a personality conflict between the Department worker and the Appellant's provider. The department worker changed her testimony. Initially, she testified that she witnessed Appellant braiding her own hair. Later, the worker stated that she heard the provider tell Appellant to stop brushing her hair and come and talk to the worker. The department worker's notes pertaining to the visit in January are very brief and contain no justification for the substantial reduction in HHS benefits beyond the reduction or proration because Appellant has a shared living situation. The provider's testimony was credible with respect to what tasks he performs and how much time it takes him to perform the tasks. The department has failed to prove, by a preponderance of the evidence, that the reduction in HHS was appropriate under the circumstances. Department policy dictates that the ASW should authorize only the amount of time needed for each task. The ASW reviewed Appellant's ADL's and IADL's with Appellant, who has been diagnosed with dementia and based her rankings on what was told to her during the assessment. However, none of the documentation in the file indicates what statements were made during the in home assessment to justify the drastic reduction in benefits. The Department's ASW did not establish that she properly calculated Appellant's HHS based on policy and the information provided by Appellant at their meeting.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department did not establish by the necessary competent, substantial and material evidence on the record that it properly denied the Appellant's HHS application based on the available information.

IT IS THEREFORE ORDERED THAT:

The Department's decision is **REVERSED**. The department is **ORDERED** to perform an updated in home assessment with Appellant and her Provider. The Department shall notify Appellant of the level of HHS that Appellant is eligible for in writing, after the updated in-home assessment.

Landis Y. Lain

Landis Y. Lain
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Health and Human Services

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

LYL/db

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.