

**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:

██████████,

Appellant

Docket No. 15-008675 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 telephone hearing was held on ██████████. Appellant appeared and testified. Appellant's Advocate, ██████████, for ██████████ ██████████, appeared and testified on behalf of Appellant. ██████████, Appeals Review Officer, represented the Michigan Department Health and Human Services (Department). ██████████, Adult Services Specialist, appeared as witness for the Department.

State's Exhibit A pages 1-43 and Appellant's Exhibits 1-4 were admitted as evidence.

ISSUE

Did the Department properly determine Appellant's level of 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.
2. On ██████████, two Adult Services Workers went to Appellant's home to conduct a HHS evaluation. (State's Exhibit A page 13)
3. On ██████████, Appellant was approved for 11.06 hours of HHS per month.
4. Appellant was approved for assistance with toileting, bathing, grooming, dressing, taking medication, meal preparation, shopping, laundry and housework for one day per week. (State's Exhibit A pages 25 and 43)
5. Appellant is diagnosed with chronic obstructive pulmonary disease, ventral

hernia, unspecified debility, polyneuropathy, diabetes mellitus and body pain. (State's Exhibit A page 22)

6. On ██████████, the Appellant signed a Home Help Services Statement of Employment with ██████████ Social Services for assistance with bathing, grooming, dressing, toileting, medication, housework, laundry, shopping and meal preparation. (State's Exhibit A page 43)
7. There were no documented requests to increase hours at the time of Appellant's assessment.
8. Appellant did not use the HHS services.
9. On ██████████, the Adult Services Worker sent Appellant an Advance Negative Action Notice saying that the case was going to be terminated as the client has not used the services since the case opened ██████████.
10. On ██████████, the Michigan Administrative Hearing System received a request for hearing for the Department requesting additional hours of HHS.

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) 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 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 testified that he needs more services than he has been provided and that his condition is not good. He stated that he contacted several agencies to come out and assist him but they would not come out to his home for only eleven hours per month. He stated that he did contact ██████████ Social Services but they told him they thought he needed eleven hours per week and that they would not come out for 11 hours per month. Appellant's Advocate testified that she also contacted several agencies for HHS assistance for Appellant and they would not come to his home in ██████████, Michigan for only 11 hours per month. The advocate testified that she conducted an Occupational Therapy Assessment and determined that Appellant needs additional hours to meet his current medical condition. He had not had a bath in one month and no laundry done for six months. The condition of his apartment was filthy. Appellant is being placed at risk due to his black outs, neuropathy, mobility impairment and numerous health issues. He cannot perform any of his basic ADLs. (Testimony)

On ██████████, Appellant contacted the Adult Services Worker and left her a message stating that he found his paperwork and that the caseworker did not approve him for laundry and requested an additional application. She told him that he would need to work out a schedule with his chosen aide and that the program does not pay an aide to drive to any location. The caseworker told him that if the time allotted did not meet his needs they could discuss a possible change in the future. Appellant also stated that he was to have surgery and would not use the services until after his surgery. (State's Exhibit A page 12)

This Administrative Law Judge finds that the in-home assessment of Appellant's needs does not make sense. The assessment is inconsistent. The assessment indicates that Appellant was granted HHS assistance with all tasks for one day per week. (State's Exhibit A page 25) The Adult Services Worker determined that Appellant needs help with toileting and gave him two minutes of services 1 day per week or 9 minutes per month. In this Administrative Law Judge's experience, most people go to the bathroom several times every single day of the week. Appellant is diabetic. Most diabetics take medication every single day of the week to control their diabetes. The caseworker gave Appellant 30 minutes 1 day per week for meal preparation. Most people eat at least once per day. If Appellant actually needs assistance with these tasks, he would need that help every day of the week. The caseworker did take copious notes during her assessment and indicated that Appellant was inconsistent in his statements. However, if his statements were inconsistent, the caseworker could have determined that Appellant was not credible and denied him need for services. Appellant did request increased services on ██████████. The caseworker did not perform an additional assessment.

Department policy dictates that Appellant may request an additional in-home assessment to determine if Appellant is entitled to receive additional HHS. Department policy requires that Department workers continually reassess case planning to provide the necessary supports to clients to enhance and preserve the client's quality of life. In addition, because of the disparate testimony by the witnesses at the hearing, This Administrative Law Judge would suggest a referral to Adult Protective Services or other appropriate agency to make certain that Appellant's needs are able to be met in his home. This Administrative Law Judge finds that the Adult Services specialist did not take appropriate action to address Appellant's request for increased HHS. The Adult Services Specialist did not act in accordance with department policy under the circumstances.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly assessed Appellant's level of care needs at the time of the in-home assessment.

IT IS THEREFORE ORDERED THAT:

The Department's Actions are REVERSED. The Department is ORDERED to conduct an updated in – home assessment and if Appellant is otherwise entitled to services, re-open a HHS case for Appellant.



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

LYL/██████

[REDACTED]
Docket No. 15-008675 HHS
Decision and Order

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.