

**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. 15-009049 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 was held on ██████████. Attorney ██████████ represented Appellant at the hearing. Appellant appeared and testified. Appellant's brother-in-law, ██████████, appeared and testified. ██████████, Appeals Review Officer, represented the Department of Health and Human Services (Department). ██████████, Adult Services Worker, Department of Health and Human Services and ██████████, Adult Services Supervisor, appeared as a witness for the Department.

State's Exhibit A, pages 1-30 were admitted on the record as evidence.

ISSUE

Did the Department properly deny 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, born ██████████, who has been diagnosed with benign positional vertigo, cervical radiculitis and generalized anxiety disorder. (State's Exhibit A page 13)
2. The Department received a Medical Needs form which indicated that Appellant has a medical need for assistance with bathing, taking medications, meal preparation, shopping, laundry and housework. (State's Exhibit A page)
3. On ██████████, the Adult Services Specialist conducted an intake interview with Appellant and her provider at her home. The Specialist determined that Home Help Services would be denied because Appellant has a responsible residing in the home. (States' Exhibit A page 7)

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4. On [REDACTED], the Department specialist received a Medical Needs form from Appellant's husband which indicated a diagnosis for back pain indicating that he needs assistance with grooming and IADLs for six months.
5. The specialist contacted the doctor's office to inquire about the need for assistance with grooming. The specialist was advised that Appellant's husband would need help with brushing his teeth and combing his hair because of back pain.
6. On [REDACTED], the Department specialist conducted a second home visit with Appellant's husband who indicated that he had worked seven months ago and that he has a tick. (State's Exhibit A page 17)
7. On [REDACTED], the Department sent Appellant an Adequate Negative Action Notice informing her that HHS would be denied because Appellant had a responsible relative living in the home. (State's Exhibit A page 7)
8. On [REDACTED], Appellant's Request for Hearing was received by the Michigan Administrative Hearing System. State's Exhibit A page 4

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, 12-1-13, 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, 12-1-13, 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, 12-1-2013), 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, 12-1-2013,
Pages 1-5 of 5*

In the instant case the Adult Services Specialist conducted the intake interview and determined that Appellant lives in the home with her husband and four children. Appellant's husband is alleged to have a tick, and a problem with shaking. Appellant's husband does not work and has carpal tunnel syndrome. Appellant's husband does not receive disability. Appellant receives SSI/Medicaid and Medicare. She reported that she had an accident in ██████████ which caused a herniated disc. She also stated that she suffers

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from anxiety and depression. Appellant stated that she does not use a cane or walker. She has a wrist brace that she wears due to arthritis. She does not receive physical therapy. She has not seen a psychiatrist in two years since she was pregnant with her three year old son. Appellant stated that she is unable to do laundry because the washer and dryer are in the basement and she cannot go up and down stairs. She cannot stand for longer than 15 minutes for meal preparation. Her daughter watches her to make certain she is okay in the bathtub. Appellant is independent with grooming. Appellant alleged that she has pain in the knee and arthritis for dressing purposes. She can do a little housework and make her bed. Appellant can drive but said she needed help with shopping. She is independent in her ability to eat, transfer, toilet, and mobility. Appellant is able to physically perform her Activities of Daily Living without assistance based upon Appellant's statements at the home visit. Appellant states that her adult daughter cares for Appellant's three year old son.

At the [REDACTED] home visit, Appellant's husband did not mention that he had back problems. The specialist observed the husband picking up the two year old son several times. He walked back and forth without any adaptive equipment. He stated that he did not know how to cook. He alleged that he can bathe himself 80% of the time. He has developed a tick disorder and is being treated for it. He is able to dress himself. He said his daughter sometimes helps him shave. Appellant's husband's Medical Needs form diagnosed the husband with 'back pain'.

Appellant's representative's testimony, while credible in this case, is insufficient to establish that Appellant has a certified medical need for HHS. Appellant must provide a Medical Needs form which lists the diagnosis and certifies that Appellant has a medical need for assistance with activities of personal care ADLs. The Medical Needs form does not indicate that Appellant has a certified medical need for assistance with ADLs.

Based on the evidence presented, Appellant has failed to prove, by a preponderance of evidence, that the denial of HHS was inappropriate. Appellant's husband is a responsible relative who lives in the home with Appellant. He has not been determined to be disabled. He has not been determined unable to assist Appellant with Activities of Daily Living. He does not work outside the home. Appellant's husband is not absent from the home for an extended period due to employment, school or other legitimate reasons. Appellant's husband has not established that he has disabilities of his own which prevents him from providing care to Appellant. (ASM 120 page 6). He has not established that his is unavailable or unable to provide the services to Appellant.

In addition, Appellant has not established by a preponderance of the evidence contained in the record that she actually needs assistance with Activities of Daily Living. The Specialist testified that Appellant stated that she needed help with dressing because of arthritis. However, Appellant's Medical Needs form does not indicate that Appellant suffers from arthritis. Nor does it indicate that Appellant has a certified medical need for assistance with dressing. Appellant stated that her daughter watches her to make certain she is okay when she bathes. She did not establish that she needs assistance to bathe. She indicated that she was able to take her medication independently.

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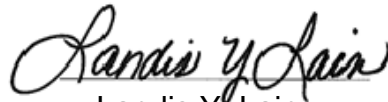
Based on the evidence presented, Appellant has failed to prove, by a preponderance of evidence, that the denial of HHS was inappropriate. The evidence on the record was not sufficient to establish that Appellant had a need for hands on assistance, functional ranking 3 or greater, with at least one ADL, based on the information available to the Specialist when she terminated Appellant from the HHS program. The evidence on the record was not sufficient to establish that the responsible adult in the home was unable to assist Appellant with Activities of Daily Living. The Specialist provided credible, detailed testimony regarding her observations of, and discussions with, Appellant. Accordingly, the denial of Appellant's HHS is upheld.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that, based on the available information, the Department properly denied Appellant's HHS.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.



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

cc:



LYL/ 

Date Signed: 

Date Mailed: 

***** 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 must 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.