

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

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IN THE MATTER OF:

██████████

Appellant

Docket No. 15-020029 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 hearing was held on ██████████. Appellant appeared and testified. Appellant was represented by Attorney ██████████, of ██████████, ██████████, Appellant's sibling and holder of POA on behalf of Appellant, appeared as a witness.

██████████ Appeals Review Officer (ARO), represented the Department of Health and Human Services. ██████████, Adult Services Worker (ASW) appeared as a witness.

ISSUE

Did the Department properly close Appellant's Home Help Services (HHS) at redetermination?

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 beneficiary of the Medicaid, SSI, SSP, and the HHS programs.
2. Appellant's diagnoses include developmental mental impairment, learning disability, DDD, dementia, deaf, and communication issues. Appellant receives social security disability based on her mental impairment(s). (Exhibit A.9; I.1; Testimony). Appellant's sibling has POA over Appellant, and 'oversees Appellant's finances.' (Exhibit A.16).

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3. Appellant has had an open HHS case since at least ██████. (Exhibit A.8).
4. On ██████ the Department conducted a redetermination for Appellant's HHS program, along with Appellant's sibling and provider. Worker notes state in part: "...The provider stated that she [provider] helps with client's bra clasp. I asked the client if she is able to put on her own bra and she said yes; the client attends shopping trips and is able to push a cart and select her own items; the provider states the client wanders off. Provider assists with medications twice a day. Both agree the provider oversees finances....they fight every day..." (Exhibit A.16; Testimony).
5. Appellant's caregiver assists Appellant with washing her hair, bathing, dressing, zippers, buttons, medications, blood sugars, insulin, medication schedule. (Testimony of Appellant's caregiver). Appellant is not capable of setting up her insulin shots, or monitoring her medications, and other IADLs. (Testimony).
6. Appellant's physician completed a DHS-54A based on "Date patient was last seen" which was ██████, indicating that Appellant has all of the ADL and IADLs needs, and needs someone to accompany the patient to medical appointments due to issues with "communication." (Exhibit I.1).
7. On ██████ the Department issued an Advance Negative Action Notice informing Appellant that her HHS case will be terminated effective ██████ due to the ASW assessment where the ASW determined that Appellant did not have any ADL needs. (Exhibit A).
8. On ██████ Appellant filed a request for an administrative hearing, with her POA identified as authorized as Appellant's hearing representative. (Exhibit A.4). Appellant was represented at the administrative hearing by an Attorney.

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) 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.

Medical Need Certification

Medical needs are certified utilizing the DHS-54A, Medical Needs form and must be completed by a Medicaid enrolled medical professional. Completed DHS-54A or veterans administration medical forms are acceptable for individual treated by a VA physician; see ASM 115, Adult Services Requirements.

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 2-3 of 3

Adult Services Manual (ASM) 120, 5-1-12, addresses the 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 must 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.

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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 IADL's 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.

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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.

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) 101, 11-1-11, addresses 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.

MEDICAL NEEDS FORM (DHS-54A)

The DHS-54A, Medical Needs form must be signed and dated by a medical professional certifying a medical need for personal care services. The medical professional must be an enrolled Medicaid provider and hold one of the following professional licenses:

Physician (M.D. or D.O.).
Nurse practitioner.
Occupational therapist
Physical therapist.

A physician assistant (PA) is not an enrolled Medicaid provider and **cannot** sign the DHS-54A.

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The medical needs form is only required at the initial opening for SSI recipients and disabled adult children (DAC). All other Medicaid recipients must have a DHS-54A completed at the initial opening and annually thereafter.

The client is responsible for obtaining the medical certification of need but the form must be completed by the medical professional and not the client. The National Provider Identifier (NPI) number must be entered on the form by the medical provider and the medical professional must indicate whether they are a Medicaid enrolled provider.

The medical professional certifies that the client's need for service is related to an existing medical condition. **The medical professional does not prescribe or authorize personal care services.** Needed services are determined by the comprehensive assessment conducted by the adult services specialist.

If the medical needs form has not been returned, the adult services specialist should follow-up with the client and/or medical professional.

Do **not** authorize home help services prior to the date of the medical professional signature on the DHS-54A.

The medical needs form does not serve as the application for services. If the signature date on the DHS-54 is **before** the date on the DHS-390, payment for home help services must begin on the date of the application.

The local office adult services unit receives a DHS-54A signed on 1/18/2011 but a referral for home help was never made. The adult services staff enters a referral on ASCAP and mails an application to the client. The application is returned to the office with a signature date of 2/16/2011. Payment cannot begin until 2/16/2011, or later, if the provider was not working during this time

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

Here, the Department argues that it closed Appellant's HHS case which was opened in ██████████ was terminated on the basis that Appellant no longer met HHS program requirements on the grounds of the assessment wherein the ASW concluded that Appellant no longer had ADL needs.

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Appellant argues that she does still have ADL needs, including bathing, grooming, and dressing (as well as a number of undisputed IADLs).

First, it is noted that the Department stipulated that Appellant is and has been medically certified as having ADL needs by her physician, both in the past and currently. The Department had not obtained an updated DHS-54A as it is not required by policy where an individual has been deemed disabled by the Social Security Administration. At the hearing, Appellant submitted a DHS-54A dated [REDACTED]. The Department objected on the grounds that the document was created after the [REDACTED] assessment. However, it should be noted that the information on the DHS-54A is based on an examination date prior to the ASW's assessment here-[REDACTED], as stated by the physician. Of note, this form also indicates that Appellant needs assistance attending appointments due to problems Appellant has with 'communication'. (Exhibit I.1).

After a careful review of the credible and substantial evidence of the entire record, this ALJ finds that Appellant has met her burden of proof to establish eligibility by the preponderance of evidence standard for the reasons set forth below.

First, it is pointed out that Appellant's disability is in part a learning disorder, or developmental disability. Federal and state law requires the Department in such circumstances to show extra-ordinary sensitivity. Here, in addition to the diagnoses which include a number of other medical diagnoses, Appellant also has a POA, who, in addition to other responsibilities, is also in charge of Appellant's finances.

Appellant has had an open case since no later than [REDACTED]. In the Department's assessment, the Department noted in more than one instance that Appellant's representations were not always consistent with the provider. It is also noted by the ASW that Appellant represented to the ASW that she and her caregiver, her sibling, "fight every day." Appellant would like her sibling to be recognized as being more independent and responsible. This ALJ conducted an administrative hearing for approximately 45 minutes, where Appellant did not testify at all (although Appellant it should be noted, also has a hearing issue). At the end of the hearing, Appellant was asked if she could close the clasp on her bra, and she answered "No." Appellant was also asked if she can wash her hair out, and she answered "No." Appellant was asked again both of these questions with regard to the period of time prior to her most recent hospitalization and fractured arm, and once again, Appellant answered "No" to both questions.

Here, there are a number of facts that weigh in favor of Appellant's argument(s)-Appellant has a learning disability, DM, needs assistance with communication, when questioned at hearing, made statements that were consistent with the provider, her inability to handle to finances, the POA, her diagnoses regarding learning and comprehension. Most importantly, this ALJ finds the Department's assessment and testimony emphasizing an inconsistency in Appellant's and the provider's statements were explained by Appellant's diagnoses and medical issues.

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DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Appellant presented credible and substantial evidence of continuing eligibility for the HHS program.

IT IS THEREFORE ORDERED that:

The Department's actions are **REVERSED**.

It is so Ordered.



Spodarek
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of
Health and Human Services

Date Mailed: 

JS/cg

cc: 

***** 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.