

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

P.O. Box 30763, Lansing, MI 48909
(800) 648-3397; Fax: (517) 373-4147

IN THE MATTER OF:

██████████,

Appellant.

_____ /

Docket No. 15-023165 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 ██████████. Appellant appeared and testified. Appellant's spouse, ██████████ appeared and testified. ██████████, Appeals Review Officer, represented the Department of Health and Human Services (Department). ██████████, Adult Service Worker, and ██████████, Adult Services Supervisor and ██████████, Financial Manager, appeared a witness for the Department.

State's Exhibit A, pages 1-38 were admitted on the record as evidence. The Department was supposed to provide this Administrative Law Judge with copies of Appellant's driver's licenses or Michigan State identification after the hearing by FAX. The documentation was not received by ██████████.

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.
2. Appellant was receiving in HHS.
3. On ██████████, Appellant married.
4. Appellant is currently legally married to ██████████.
5. Appellant and his spouse maintain separate legal addresses.
6. On ██████████, the Department caseworker sent Appellant an Advance Negative Action Notice (DHS-1212) informing him that his HHS

case would be terminated effective [REDACTED] after the worker determined that Appellant is married.

7. On [REDACTED], the Department caseworker's notes indicate that Appellant made untruthful statements to receive payments. (State's Exhibit A page 16)
8. On [REDACTED], the worker sent Appellant an over payment letter (DHS-566) seeking recoupment of funds paid out beginning [REDACTED] through [REDACTED], in the amount of \$ [REDACTED].
9. On [REDACTED] an initial Collection Notification was subsequently sent to the Appellant from the Medicaid Collections Unit.
10. 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) 101,
12-1-2013, Page 1 of 4.*

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*

Responsible Relatives

A responsible relative is defined as an individual's spouse or a parent of an unmarried child under age 18.

Activities of daily living (ADL) may be approved when the responsible relative is **unavailable** or **unable** to provide these services.

Note: Unavailable means absence from the home for an extended period due to employment, school or **other**

legitimate reasons. The responsible relative must provide a work or school schedule to verify they are unavailable to provide care. **Unable** means the responsible person has disabilities of their own which prevent them from providing care. These disabilities must be documented and verified by a medical professional on the DHS-54A, Medical Needs form.

Do **not** approve shopping, laundry, or light housecleaning, **when a responsible relative of the client resides in the home, unless** they are unavailable or unable to provide these services. Document findings in the general narrative in ASCAP.

In the instant case, the Department determined that Appellant is married. On ██████████, the caseworker received a telephone call from someone purporting to be Appellant's provider, saying that the Appellant's wife was in the home and he wanted to be taken off the case. However, the caseworker continued the payments because she did not have any evidence that Appellant's spouse resided in the home with him. The Appellant conceded that he is married. He stated on the record that he got married and almost immediately he and his spouse tried to end the marriage but it cost \$██████████ to annul the marriage. He did not have the money. He and his spouse have never lived together.

Appellant has established by the necessary competent, substantial and material evidence on the record that his spouse does not reside in the home with her or that the spouse is absent from the home for extended times for legitimate reasons. The evidence on the record was sufficient to establish that Appellant's spouse does not live with him in the home, was unable to assist Appellant with Activities of Daily Living and that Appellant has had a third party caring for his personal needs since ██████████. Appellant and his witness provided credible, detailed testimony regarding her observations of, and discussions with the Department caseworker. Appellant's testimony was consistent, as was his witness' testimony. The Department did not provide the copies of the Appellant's state identification or his spouse's driver's license as was requested by the Administrative Law judge. Therefore, the Administrative Law judge will accept Appellant's testimony that he and his spouse maintain separate legal addresses as credible.

The Department did not provide sufficient evidence that Appellant and his wife maintain the same legal address. The Department did not establish that Appellant's spouse is available and capable of caring for Appellant's personal needs.

A ██████████ voicemail from Appellant to the provider indicates that he notified the Department caseworker that he married his provider. Payments were to be stopped effective ██████████. (State's Exhibit a page 17)

██████████
Docket No. 15-023165 HHS
Decision and Order

Appellant's case was not closed and the payments were not stopped. At some point Appellant gained a different provider.

A ██████████ caseworker note indicates that Appellant's wife clearly stated at the redetermination interview that she and Appellant did not reside in the same home, and that Appellant had a caretaker who would continue to perform HHS for Appellant (State's Exhibit A page 16)

The Department has not established by the necessary competent, substantial and material evidence on the record that it was acting in compliance with Department policy when it determined that Appellant's HHS should be cancelled under the circumstances. The Department has not established that Appellant's wife resides with him. The Department has not established that Appellant's wife was a responsible person who was available and capable of helping her with Activities of Daily Living in the home. The department's determination cannot be 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 did not properly propose to cancel Appellant's HHS and recoup HHS benefits from ██████████ through ██████████ ██████████.

IT IS THEREFORE ORDERED THAT:

The Department's decision is **REVERSED**. The Department is **ORDERED** to reinstate Appellant's HHS case to the date of closure, perform an updated in-home assessment with Appellant and his provider and if Appellant is otherwise eligible, pay to Appellant any HHS benefits to which he is entitled from July 2015 forward.



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

LYL ██████████

cc: ██████████
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██████████

Date Mailed: March 1, 2016

Docket No. 15-023165 HHS
Decision and Order

***** 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 March 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.