

**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. 15-020678 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 hearing was held on ██████████. Appellant appeared and testified. ██████████ Appeals Review Officer, represented the Department of Health and Human Services. ██████████ Adult Services Worker (ASW), appeared as a witness for the Department.

ISSUE

Did the Department do a proper assessment pursuant to Appellant's referral and case opening for her HHS grant?

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 program.
2. Appellant's diagnoses include COPD, pressure ulcers, urinary incontinences, lymphedema, and osteoarthritis. (Exhibit A.15).
3. On ██████ the Department received a referral on behalf of Appellant for the HHS program.
4. On ██████ the Department conducted a review and completed an in-home visit. The ASW recorded its comprehensive assessment on Exhibit A.15-17, subsequently approving Appellant for HHS in the amount of \$504.00 pursuant to a ██████ notice with a ██████ start date. (Exhibit A.6).

5. On ██████████ Appellant and the worker had a conversation regarding Appellant's time and task. Following this conversation, the Department increased Appellant's HHS grant to \$680.55 beginning ██████████ (Exhibit A).
6. On ██████████ Appellant's Request for Hearing was received by the Michigan Administrative Hearing System. Appellant requested an administrative hearing in part to file a complaint regarding the conduct of a state employee.

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*

Appellant filed an appeal in part to file a complaint regarding the conduct of a state employee. Under the Michigan Administrative Code, Administrative Hearing Rules, Administrative Law Judges do not have jurisdiction to review such complaints:

A complaint as to alleged misconduct or mistreatment by a state employee shall not be considered through the administrative hearing process, but shall be referred to the agency customer service unit. Part 10: DHHS & Department of Community Health subpart A. Public Benefits, Right to hearing, R 792.11002 Section (3). History: 2015 MR 1, Eff. Jan. 15, 2015.

Policy found in BAM 105 titled Rights and Responsibilities identifies where clients can file any such complaint(s). In general, clients can file a complaint at the local office, and/or at the Central Office in Lansing. For federally funded programs, clients may also file a complaint with the federal agencies. BAM 105 states:

Right to Nondiscrimination

All Programs

Clients have the right to be treated with dignity and respect.

...Clients have the right to make complaints to the:

Michigan Department of Health and Human Services
Specialized Action Center
235 S. Grand Avenue
P.O. Box 30037
Lansing, MI 48909
Or call (855) 275-6424 or (855) ASK-MICH.

Complaints that are deemed to be potential ADA or discrimination claims will be routed directly to the county director. The county director will use the Office of Human Resources (OHR) to properly address all aspects of the allegations. All other complaints that come through the Specialized Action Center will be routed to the customer information specialist in the district/county office for follow-up.

Michigan Department of Civil Rights (MDCR) and/or US Equal Employment Opportunity Commission complaints regarding clients must be routed directly to OHR for review and a coordinated response with the District/County office. Any mediations, settlements or appeals will be directed to the office legal services and policy for further review and coordination with the district/county office.

The Office of Human Resources is responsible for all agency equal opportunity and diversity efforts. For more information, visit this website: http://www.michigan.gov/dhs/0,4562,7-124-5459_7701_7845---,00.html.

Here, the Department argues that it made a correct assessment based on the information available at the time of the assessment, and, made a correct subsequent increase in Appellant's benefits.

Appellant argues for more hours than granted, and that she previously had a chore grant with more hours than approved in the current referral. Appellant also requested an administrative to file a complaint regarding the conduct of a state employee.

As to the amount of hours, first it is noted that Appellant offered no policy or procedure that would require a worker in assessing a current referral to take into account past HHS grants in determining current eligibility. In addition, under general evidentiary rules, an ALJ cannot take into account evidence that was not made part of the administrative record, and/or evidence that was not considered at the time of the action taken by the Department.

The purview of an administrative law judge (ALJ) is to review the Department's action and to make a determination if those actions are in compliance with Department policy, and not contrary to law. The ALJ must base the hearing decision on the preponderance of the evidence offered at the hearing or otherwise included in the record. The ALJ at an administrative hearing must base a decision upon the evidence of record focusing at the time of the assessment. The Department cannot be held accountable for evidence it was unaware of at the time of its determination.

After a careful review of the credible and substantial evidence on the whole records, this ALJ finds that the Department's actions were in compliance with its policy, and supported by the documentary and testimonial evidence taken as a whole. The Department submitted documentary notes recorded by the ASW, and, policy to support the action taken.

As noted above, law and policy gives an ASW much discretion in assessing an applicant's HHS hours for the program. It is noted that the ASW's commentary regarding her medical opinion as to Appellant's medical conditions and treatments are not identified in services policy as a required assessment. At the same time, the ASW's overall assessment regarding Appellant's functional limitations are consistent with the ASW's observations and records in calculating the HHS grant here. In addition, the testimony regarding the calculation of hours is consistent. Thus, this ALJ must uphold the Department's determination.

It is also noted that Appellant also asked to make a complaint regarding the conduct of a state employee. Such complaints are not hearable issues at an administrative hearing; Appellant may file such complaints at the local or central office. MAC Rule 792.11002, Section (3); BAM 105.

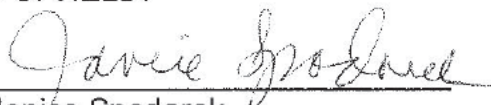
Last, it is noted that this ALJ received documentation from Appellant after the administrative hearing that was ex parte communication and thus, must be excluded from the evidentiary record as it is not admissible.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department's allotment of Appellant's HHS grant was correct based on the available evidence.

IT IS THEREFORE ORDERED THAT:

The Department's decision in this case is hereby UPHELD.


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

Date Mailed: [REDACTED]
JGS/cg

cc: [REDACTED]

Docket No. 15-020678-HHS
Decision and Order

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.