



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
Christopher Seppanen  
Executive Director

MIKE ZIMMER  
DIRECTOR

[REDACTED]

Date Mailed: [REDACTED]  
MAHS Docket No.: 16-001572  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Janice Spodarek**

**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 Petitioner's request for a hearing.

After due notice, a hearing was held on [REDACTED]. Petitioner appeared and testified. [REDACTED] appeared as a witness.

[REDACTED] represented the Department of Health and Human Services (Respondent). [REDACTED], Adult Services Worker (ASW), and [REDACTED], Services Program Manager appeared as witnesses.

**ISSUE**

Is there a hearable issue for review?

**FINDINGS OF FACT**

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. At all relevant times, Petitioner has had a Home Help Services (HHS) case with the Michigan Department of Health and Human Services (Respondent).
2. In [REDACTED], Petitioner began working with a different provider. To date, that provider has not enrolled in CHAMPS.
3. Petitioner's previous provider received the last payment for services on [REDACTED].

4. Petitioner has had 4 different workers in the last year and one-half. (Testimony).
5. On [REDACTED], the Respondent issued an Advance Negative Action Notice to Petitioner informing her that her HHS would be terminated due to services not being utilized for the past 6 months. (Exhibit A).
6. The Respondent subsequently determined that the [REDACTED] notice was issued in error and on [REDACTED] issued a correction notice to inform Petitioner that services are continuing. Petitioner has not had any loss of benefits. (Exhibit A.2).
7. On [REDACTED] MAHS received Petitioner's request for an administrative hearing stating in part that she disputed the closure, that her provider ..."has tried numerous times to get on the CHAMPS to no avail, and ...I only recently have internet." Petitioner also requested an administrative hearing to file a complaint regarding the conduct of the workers assigned to her case. (Exhibit A.4-5; Testimony).
8. The Respondent conducted an in-home assessment on [REDACTED]. At that time, the Respondent met with the Petitioner and her provider, gave instructions on CHAMPS, and gave them information on calling the CHAMPS "help line." There is no dispute regarding Petitioner's medical eligibility.

### **CONCLUSIONS OF LAW**

The Medical Assistance Program (MA) 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 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 health professional 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 1of 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.

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### **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.

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## **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.

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## 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.*

Specific policy from the Home Help Providers policy states in relevant part:

**PROVIDER CRITERIA:**

Determine the provider's ability to meet the following **minimum** criteria in a face-to-face interview with the client **and** the provider.

The specialist must, at a minimum, have a face-to-face interview with the client, prior to case opening, then every six months in the client's home, at review and redetermination.

**PROVIDER  
INTERVIEW**

An initial face-to-face interview must be completed with the home help provider. A face-to-face or phone contact must be made with the provider at the six month review or redetermination to verify services are being furnished.

At the administrative hearing, Petitioner had a number of concerns for which she requested review. One complaint was with regard to the conduct of the state employees-four to be precise-based on Petitioner's representations that she has had 4 different workers in the last year and one-half, who, have failed to respond to many of her inquiries and messages.

The Michigan Administrative Hearing System Administrative Hearing Rules addresses such complaints:

R 792.11002 Right to hearing

Rule 1102 (3) 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...

Thus, this ALJ has no jurisdiction to review Appellant's complaints regarding the conduct of a state employee. Clients who have such concerns pursuant to the policy in BAM are instructed to contact a worker's supervisor. Specifically, BAM 105 state in regard to this issue:

**All Programs**

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

## Right to Nondiscrimination

For FAP Complaints alleging discrimination, 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](http://www.michigan.gov/dhs/0,4562,7-124-5459_7701_7845---,00.html).  
BAM 105, page 3, effective 1/1/2016.

Petitioner's next complaint was that her provider has been attempting to enroll in the CHAMPS system without success since [REDACTED]. Petitioner stated that she has requested a paper application for a provider number, that she and her provider had a computer, and that she was familiar with the service phone number but has waited on hold for up to 3 hours. It does appear however, based on the Petitioner's hearing request, that Petitioner indicated that she only recently acquired access to the internet.

As to the failure of the provider to enroll, the Respondent indicated that clients are generally given the information necessary to enroll, and, instructed as to the web site(s) and a help line phone number to call where an individual will assist providers in a step-by-step process as to how to enroll. This information was updated with Petitioner on [REDACTED]. The Respondent also did not dispute that Petitioner may very well have been on

hold for 3 hours, and may have to hold longer, but that calling first thing in the morning when the help line desk opened up might be better.

The Respondent also indicated that that there is nothing the local office can do as the State of Michigan has removed the ability of the local office to assist providers in enrolling in the CHAMPS system. Additionally, there is no longer an option to enroll with a paper form; none exists.

As to the CHAMPS issue, there is no remedy that an Administrative Law Judge has to remedy this situation. The Respondent did not submit any applicable policy with regard to CHAMPS, and the applicable policy found in ASM 135 – Home Help Providers-states that providers need to enroll on Bridges. However, the Respondent gave much testimony at the hearing regarding the options available by the State of Michigan, and, information to Petitioner at the 3/3/16 meeting with regards to enrollment.

The last issue raised by Petitioner deals with the [REDACTED] negative action review regarding Petitioner's HHS case closure. As noted in the Findings of Fact, the Respondent stipulated that this notice was issued in error. Furthermore, prior to the administrative hearing the Respondent issued a corrective notice. Petitioner's case never closed. Petitioner suffered no loss of benefits based on the error subsequently corrected. Under CFR 438.200,

As to issues that will trigger a right to an administrative hearing, That is, the issue that must be resolved before a Medicaid fair hearing can take place is whether the Appellant's stated request for hearing constitutes an "action" as defined in the Code of Federal Regulations (CFR) that affords the Appellant, a Medicaid beneficiary, the right to a fair hearing.

As it relates to this case, 42 CFR defines action as a denial, reduction, suspension, or termination of a requested or previously authorized Medicaid covered service. If Petitioner's request for hearing did not arise from the denial or termination of a requested service or previously authorized Medicaid covered service, there is no action affording an opportunity for fair hearing, and the Michigan Administrative Hearing System lacks jurisdiction to review and decide the matter.

Accordingly, the undersigned must dismiss this matter based on Petitioner's all 3 issues for lack of jurisdiction.

**DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that there is no hearable issues based on the available evidence, and thus,

**IT IS THEREFORE ORDERED THAT:**

The Petitioner's request for an administrative hearing **DISMISSED**.

JS/cg



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

**NOTICE OF APPEAL:** A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings  
Reconsideration/Rehearing Request  
P.O. Box 30763  
Lansing, Michigan 48909-8139

**DHHS**

[REDACTED]

**DHHS Department Rep.**

[REDACTED]

**DHHS -Dept Contact**

[REDACTED]

**Petitioner**

[REDACTED]