

107 CMR 11.00: HOME CARE ASSISTANCE PROGRAM

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11.01: Scope and Purpose

- (1) The Home Care Assistance Program (HCAP) is a statewide program administered by the Commission for eligible individuals whose disabilities result in a need for homemaking and coordination of services in order to live independently and prevent the need for hospitalization and institutionalization in the community.
- (2) The Home Care Assistance Program provides needed homemaking and coordination of services to eligible individuals, age 18 through 59 with disabilities other than legal blindness.

11.02: ~~Meaning of Terms in 107 CMR 11.00~~ Definitions

Terms in 107 CMR 11.00 shall, unless the context otherwise requires, have the meanings ascribed below or in 107 CMR 3.00.

Administrative Review is the informal non-adversarial process the Commission offers to individuals to resolve differences promptly. It is a review conducted by the HCAP Director that includes but is not limited to, interviews, fact gathering, negotiations, and document review.

Appeals Coordinator is the Commission employee who is responsible for scheduling informal administrative reviews, and fair hearings, as well as communicating with individuals, advocates, family members and Commission staff about appeal and mediation requests.

Applicant is an individual who has ~~signed and dated a written~~ submitted an application for services of the HCAP of the Massachusetts Rehabilitation Commission.

Commission is the Massachusetts Rehabilitation Commission.

Fair Hearing Officer is an impartial hearing officer designated by the Commission who will conduct the fair hearing and issue a decision on appeal in accordance with 801 CMR 1.02 et seq.

Fair Hearing is an informal and impartial hearing process to resolve disputes that applicants and eligible individuals have regarding HCAP eligibility determinations and services.

HCAP Case Manager is the Commission employee assigned to assist ~~the consumer~~ individuals in identifying, coordinating and reviewing necessary services to support independent living.

~~Consumer is an individual who is eligible for or receiving services from the Home Care Assistance Program.~~

Homemaker Homecare Agency Worker is an employee of an agency under contract with the Commission to perform homemaking tasks as described in 107 CMR ~~11.11(1)~~ 11.08.

Homemaking Services are services ~~that are~~ described in 107 CMR ~~11.11(1)~~ 11.08, performed by a homecare agency worker or a non-agency based homecare worker. ~~and are performed for the consumer who, because of a disability, cannot perform homemaking tasks. Such tasks are performed by a homemaker or home care assistant. The consumer must be at home while home care services are provided.~~

Homemaking Services Eligibility Assessment is ~~the HCAP assessment of:~~

- ~~(a) — medical, psychiatric and related information; and~~
- ~~(b) — homemaker task evaluation to determine HCAP eligibility.~~ a comprehensive review of the individual's application, documentation, and interview with the applicant to determine whether the individual meets the HCAP eligibility requirements as described under 107 CMR 11.05.

Homemaker Task Evaluation is the ~~in-home~~ evaluation of the individual's capacity to perform homemaking tasks described in 107 CMR ~~11.11(1)~~ 11.08(1), performed by the Commission or its designee. ~~Same evaluation shall be performed by licensed and/or registered nurses, licensed physical or occupational therapists under agreement with HCAP.~~

Non-Agency Based Homecare Worker is an individual, chosen and directed by the eligible individual, who provides homemaking services as an independent contractor for the eligible individual.

Ombudsperson is the MRC staff person designated to function as a liaison between individuals and their representatives, and the Commission. The ombudsperson is available to answer a variety of inquiries and help resolve complaints through problem-solving and negotiation between the parties.

Service Plan identifies authorized service hours needed to address an eligible individual's homemaking needs based on a Homemaker Task Evaluation.

~~The HCAP Review Board is the review board assigned to conduct HCAP administrative reviews and includes the HCAP Director, Deputy Commissioner of Independent Living and Chairperson of the Home Care Subcommittee of the Rehabilitation Advisory Council (RAC) or designee of the Chairperson of the HCAP RAC who must be a consumer.~~

~~The HCAP Administrative Review is an informal and impartial hearing process to settle disagreements that applicants and consumers have with HCAP decisions effecting HCAP services to individuals.~~

11.03: Referral and Application

- (1) Any person, agency or organization may notify the **HCAP Commission** of an individual who may be in need of homemaking services.
- (2) HCAP referral and application policies shall be written and available to the public.
- (3) ~~At~~ **Upon request**, applicants shall be provided written referral and application policies.

11.04: ~~Non-Discrimination~~ Non-Discrimination

- (1) **Eligibility** HCAP eligibility and other program requirements shall be applied without regard to the sex, sexual orientation, race, **religious** creed, color, **ancestry**, or national origin of the individual applying for services.
- (2) No individual shall be excluded or found ineligible solely on the basis of the type of their disability, provided, however, that individuals who are legally blind shall **first** be referred for services ~~to from~~ the Massachusetts Commission for the Blind.
- (3) HCAP services may only be delivered in Massachusetts.

11.05: Eligibility **Determination Process**

~~An individual is eligible for HCAP Services when HCAP has determined:~~ The Commission shall determine **eligibility based on the information provided by the applicant during the Homemaking Services Eligibility Assessment.**

(1) **Determination of Eligibility.** An applicant who meets the following criteria shall be deemed eligible:

(1a) the individual is between the ages of 18 and 59, and has a medically documented physical or mental disability that results in the individual's inability to perform essential homemaking ~~activities~~ **tasks**; and

(2b) the provision of ~~such~~ **homemaking** services is necessary for the individual to live independently ~~and to prevent the need for hospitalization or institutionalization in the community~~; and

(3c) the individual, and **any** other adults ~~residents of in the household are~~ **home where the individual resides, are** unable to perform the ~~essential~~ **homemaking activities tasks, pursuant to homemaking services assessment** as determined in the Homemaking Services Eligibility Assessment, due to disability or the relationship between the individual and other adults in the home; and

(4d) the individual meets the financial criteria pursuant to 107 CMR ~~11.11.11.14~~ **(Financial Need), and;**

~~(5) the individual and relevant adult residents of the household have provided information necessary to determination of above.~~

(2) Determination of Ineligibility. An applicant is ineligible for homemaking services based on one, or more, of the following criteria:

(a) The individual fails to provide sufficient information or documentation to establish eligibility under 107 CMR 11.05(1);

(b) The individual is receiving, or has been found eligible to receive, comparable benefits under another state program; or

(c) The individual is living in a residential environment where at least one other adult is responsible for ensuring homemaker tasks necessary to remain independent in the community are completed.

(3) Notice of Eligibility Determination. An individual shall be notified in writing of the eligibility or ineligibility determination. An application will be considered complete when sufficient information, required under 107 CMR 11.05(1) has been provided to the eligibility team.

11.06: ~~Assessment~~ Service Plan Development

~~A Homemaking Services Assessment shall be conducted to determine the individual's eligibility. Any individual's failure to cooperate in the assessment shall result in determination of ineligibility.~~

(1) Once deemed eligible, the Commission will conduct a Homemaker Task Evaluation for the individual. This evaluation will be used by the Commission:

(a) to determine the number of homemaking services and service hours the eligible individual needs to live independently, as described in 107 CMR 11.08; and

(b) develop a Service Plan, which includes those homemaking services and homemaking service hours.

(2) The Service Plan shall be written by an HCAP case manager, approved by a supervisor, and provided to the individual, prior to services being provided.

(3) The Service Plan shall be reviewed in accordance with 107 CMR 11.07.

11.07: ~~Notice of Eligibility Determination~~ Redetermination Eligibility Review

~~A written certification of HCAP eligibility determination shall be written by a case manager and approved by a supervisor prior to providing services, and provided to the individual.~~

(1) HCAP will review an individual's Service Plan and eligibility for homemaking services annually, or more frequently as deemed necessary by HCAP. Such review shall include:

(a) a review of the individual's eligibility under 107 CMR 11.05;

(b) a review of the service plan including an assessment of the quality of services

delivered by the provider and a review of the individual's satisfaction with services rendered.

- (2) The eligibility review may result in a change in homemaking services, homemaking service hours, a referral to another program, or case closure, depending upon the individual's needs.
- (3) HCAP will issue written notification if an eligibility review decision impacts continued homemaking services or homemaking service hours.
- (4) An individual's failure to cooperate in this eligibility review may result in case closure.

11.08: Eligibility Review Scope of Services

~~(1) As determined necessary by the case manager a review of continued eligibility shall be conducted by HCAP.~~

~~(2) Determination of continued eligibility shall be written and the individual shall be notified of determination.~~

~~(3) An individual's failure to cooperate in the eligibility review shall result in determination of ineligibility.~~

(1) HCAP will only provide HCAP homemaking services as determined necessary in the Homemaker Task Evaluation and Service Plan. Homemaking tasks shall only include:

- (a) Meal preparation;
- (b) Grocery shopping at the supermarket or grocery store closest to the individual's residence;
- (c) Laundry of the eligible individual's items only; and
- (d) Light housekeeping of the individual's primary living areas of the kitchen, bathroom, living room and the individual's bedroom.

(2) Ancillary services, which enable the individual to benefit from homemaking services identified in the Service Plan, as determined in the Homemaker Task Evaluation, and included in the Service Plan, may be provided. Ancillary services may include:

- (a) The purchase or repair of common household goods necessary for daily living including, but not limited to, microwave ovens, cookware, food storage, air conditioning units and housekeeping items; and
- (b) Other services or goods HCAP deems necessary to meet the individual's homemaking needs.
- (c) Funds expended for ancillary services and goods shall be in accordance with HCAP guidelines.

(3) Prior to purchasing ancillary services, HCAP will consider if comparable services are available through other available benefits, including existing resources available through service providers, public resources, and charitable organizations.

(4) The provision of HCAP services are subject to available funding and dependent upon availability of resources and providers identified in the Service Plan. Eligible individuals will be prioritized for services according to the date they were deemed eligible.

11.09: Change in Living Conditions or Health Status

Eligible individuals shall notify their HCAP ~~c~~Case mManager of any change in their living, financial or health status that may affect eligibility for HCAP services, within 30 days of such change.

~~11.10: Scope of HCAP Services~~

~~(1) HCAP services may be provided for up to 12 hours per week as determined by HCAP and may include but are limited to:~~

~~— (a) Meal preparation~~

~~— (b) Grocery shopping at the supermarket or grocery store closest to the individual's residence;~~

~~— (c) Laundry of the eligible individual's items only;~~

~~— (d) Light housekeeping of the individual's primary living areas of the kitchen, bathroom, living room and the individual's bedroom.~~

~~(2) No other tasks, including but not limited to heavy chore tasks, shall be provided by HCAP.~~

11.14: Comparable Benefits and Programs

~~The~~ HCAP shall consider and require use of comparable benefits and programs to meet in whole or in part the cost of HCAP services.

11.121: Financial Need ~~Determination~~ Assessment

(1) HCAP services shall be provided only after ~~determination of a~~ financial ~~eligibility need~~ assessment is completed.

(2) All applicants must cooperate in completion of forms and provide documentation necessary to determine financial eligibility.

(3) To meet HCAP's financial eligibility requirement, the applicant's income must ~~considered to be at or below~~ 300% ~~or less~~ of the Poverty Threshold as reported by the United States Census Bureau.

(4) Recipients of Supplemental Security Income (SSI), Transitional Assistance for Dependent Children (TAFDC), or Emergency Aid for the Elderly and Disabled Children (EAEDC) shall be considered financially eligible for HCAP.

11.132: ~~Order of Services~~ Case Closure

~~Homecare services are provided in the order of eligibility determination.~~

(1) An individual may be deemed no longer eligible for HCAP services based on one or more of the following circumstances:

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- (a) failure to participate with the eligibility review process as described 107 CMR 11.07;
 - (b) a determination the individual no longer meets the criteria for eligibility as described in 107 CMR 11.05;
 - (c) relocation outside of the Commonwealth;
 - (d) a change in the individual's health status, finances, and/or living circumstance as described under 107 CMR 11.09; or
 - (e) upon request of the individual.
- (2) The individual shall receive written notice of the closure decision.
- (3) HCAP shall continue to provide services for an additional 30 days following the date of the case closure notice except in the following circumstances:
- (a) The individual is no longer able to receive services due to a change in their living circumstance;
 - (b) The individual no longer resides in the Commonwealth;
 - (c) The individual no longer wishes to receive HCAP services; or
 - (d) HCAP determines services cannot be safely administered.

11.143: ~~Right To Appeal~~ Review of Agency Decision

- (1) An individual, or authorized representative, may request a review of the following agency decisions:
- (a) Case closure under 107 CMR 11.12;
 - (b) A determination of ineligibility under 107 CMR 11.05; or
 - (c) A reduction or termination of services under 107 CMR 11.07.
- (2) Upon receiving a request for review, the matter will be submitted for administrative review in accordance with the terms set forth in 107 CMR 11.14. If the issues under administrative review are not resolved by the informal review, the individual may request a fair hearing, in accordance with the requirements of 107 CMR 11.15.
- (3) Unless the parties agree otherwise, the HCAP services which are the subject of the administrative review, or appeal under 107 CMR 11.15, shall not be suspended, reduced or terminated until the resolution of the appeal unless doing so would pose a risk to the physical safety of the individual, Commission staff, or a home care worker.
- (4) Notwithstanding the provisions of 107 CMR 11.13(3), services may be suspended pending the administrative review, and appeal, based any one of the following:
- (a) The individual is residing with one or more adult(s) responsible for their care in accordance with 107 CMR 11.05(2)(c);
 - (b) The individual no longer resides in the commonwealth in accordance with 107 CMR 11.12(3)(b); or
 - (c) The individual is no longer residing in a geographic area where services are available, or services have been terminated or reduced due to funding.

11.14: Administrative Review

- (1) A request for review must be made in writing, and may be submitted electronically, by mail or hand delivery to the HCAP Director, c/o Home Care Assistance Program (HCAP) within 30 days of the issuance of the agency decision for which review is requested.
- (2) The Home Care Director, or their designee, shall acknowledge receipt of the request for review in writing within 10 business days of receipt of the request for review.
- (3) After receiving a request for review, the HCAP Director shall review the individual's entire HCAP file.
- (4) Where requested by either the individual or HCAP, the Ombudsperson or Office of Individual Family Engagement may be present to assist in resolution.
- (5) Within 30 days of the acknowledgement of receipt of a request for review, the HCAP Director shall render a written administrative review decision and provide a copy of that decision to the individual through electronic message or via U.S. Mail, as requested.

11.15: Fair Hearing

- (1) ~~An individual/guardian may appeal a case closure decision or ineligibility determination by writing to the HCAP Director, c/o Home Care Assistance Program (HCAP). The Home Care Director shall acknowledge the request for an appeal in writing within ten working days of the receipt of the request~~ The individual, or their authorized representative, may appeal the administrative review decision by filing a petition for a fair hearing with the Appeals Coordinator within 30 days of the issuance date of the written administrative review decision.
- (2) The Appeals Coordinator will schedule the fair hearing to be held within 60 days of receiving the petition.
- (32) ~~After receiving an appeal the HCAP Director, in coordination with the HCAP Supervisors and Case Managers, shall review the individual's entire HCAP file. Within 30 days of the acknowledgement of the request for an appeal, the HCAP Director shall render a decision in writing to the applicant~~ The fair hearing shall be conducted by an impartial hearing officer designated by the Commissioner. The hearing officer may be an employee of the Commission, provided, that such employee does not have a direct or indirect interest, personal involvement, or bias in the hearing in accordance with 801 CMR 102 *et seq.*
- (43) ~~In the event the individual remains in disagreement with the HCAP Director's decision, he/she or the guardian may request an Administrative Review before the Review Board. The HCAP Review Board is the HCAP Director, Deputy Commissioner of Independent Living and Chairperson of the Home Care Subcommittee of the Rehabilitation Advisory Council (RAC) or designee of the Chairperson of the HCAP RAC (who must be a consumer). The review shall be conducted according to the provisions of Informal Rules of Adjudicatory Procedure found at 801 CMR 1.0 et seq. The HCAP Review Board shall schedule the appeal within 30 days of receipt of the request to appeal the HCAP Director's decision~~ The fair hearing shall be conducted according to the provisions of Informal Rules of Adjudicatory Procedure found at 801 CMR 1.02 *et seq.*
- (5) The individual/~~guardian~~, authorized representative, or an advocate on behalf of the individual ~~applicant~~ is entitled and shall have access to the HCAP record. A signed release from the individual/~~guardian~~, or authorized representative, is necessary to allow an advocate access to these

records. The ~~guardian/~~ ~~authorized representative and/or~~ advocate may accompany the individual to the ~~Administrative Review fair hearing~~. HCAP must be informed of the individual's intent to have an advocate present. Both the individual and the HCAP staff shall present their case.

(~~56~~) The ~~HCAP Review Board hearing officer~~ shall render a decision based on documentation and evidence submitted by the parties at the hearing and the HCAP policies and regulations. A written decision shall be mailed to the individual ~~/guardian, or authorized representative, and the HCAP staff~~, no later than 45 days after the hearing. This decision constitutes the final decision by the agency.

(~~67~~) Individuals dissatisfied with the decision of the ~~HCAP Review Board hearing officer~~ have the right to pursue an appeal at their own expense, through the appropriate Superior Court of the Commonwealth pursuant to M.G.L. c. 30A.

11.1~~56~~: Rates and Expenditures

Rates, fees and expenditures for Homemaking ~~Care S~~ services are subject to all applicable ~~Commonwealth of Massachusetts state~~ statutory ~~and~~ regulatory ~~and related~~ requirements governing ~~the purchasing~~es of goods and services.

REGULATORY AUTHORITY

107 CMR 11.00: M.G.L. c. 6, §§ 75 and 78.