STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH
P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 334-9505

IN THE MATTER OF:

[redacted],

Appellant
_____/

Docket No. 2009-24513 HHS
Case No. [redacted]
Load No. [redacted]

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ) 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 [redacted]. [redacted] represented her father, [redacted], represented the Department. [redacted] was present as a Department witness. [redacted], also appeared as a witness on behalf of the Department.

ISSUE

Did the Department properly authorize Home Help Services payments to the Appellant?

FINDINGS OF FACT

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

1. The Appellant is a Medicaid beneficiary who applied for Adult Home Help Services. He is [redacted].
2. The Appellant resides with his wife, aged [redacted]
3. On [redacted], the Department sent an Adult Services Worker to the Appellant's home to conduct a comprehensive assessment following application for services.

4. The Appellant's wife is a legally responsible adult and able to provide care to the Appellant.

5. The Adult Services Worker sent an approval letter to the Appellant informing him he was approved for home help assistance payments in the amount of [redacted] per month.

6. The Appellant was approved for assistance payments for the tasks of housework, laundry and shopping. The assistance was pro-rated to reflect the Appellant shares his home with his wife and other adults.

7. The Appellant appealed the determination on [redacted].

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 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.

ELIGIBILITY FOR HOME HELP SERVICES

> Home help services (HHS) are defined as those, which the Agency is paying for through Title XIX (Medicaid) funds. The customer must be eligible for Medicaid in order to receive these services.

Medicaid/Medical Aid (MA)

Verify the customer's Medicaid/Medical aid status.

> The customer may be eligible for MA under one of the following:
> - All requirements for MA have been met, **or**
> - MA spend-down obligation has been met.
>
> *Adult Services Manual (ASM) 4-1-2004, Page 8 of 27*

Necessity For Service

The adult services worker is responsible for determining the necessity and level of need for HHS based on:

- Customer choice.
- A complete comprehensive assessment and determination of the customer's need for personal care services.

• Verification of the customer's medical need by a Medicaid enrolled medical professional. The customer is responsible for obtaining the medical certification of need. The Medicaid provider identification number must be entered on the form by the medical provider. The Medical Needs form must be signed and dated by one of the following medical professionals:

- Physician
- Nurse Practitioner
- Occupational Therapist
- Physical Therapist

The physician is to certify that the customer's need for service is related to an existing medical condition. The physician does not prescribe or authorize personal care services.

If the Medical Needs form has not been returned, the adult services worker should follow-up with the customer and/or medical professional.

COMPREHENSIVE ASSESSMENT

The Adult Services Comprehensive Assessment (DHS-324) is the primary tool for determining need for services. The comprehensive assessment will be completed on all open cases, whether a home help payment will be made or not. ASCAP, the automated workload management system provides the format for the comprehensive assessment and all information will be entered on the computer program.

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 customer in his/her place of residence.
- An interview must be conducted with the caregiver, if applicable.
- Observe a copy of the customer's social security card.
- Observe a picture I.D. of the caregiver, if applicable.
- The assessment must be updated as often as necessary, but minimally at the six month review and annual re-determination.
- A release of information must be obtained when requesting documentation from confidential sources and/or sharing information from the department record.
- Follow specialized rules of confidentiality when ILS cases have companion APS cases.

Functional Assessment

The **Functional Assessment** module of the **ASCAP** comprehensive assessment is the basis for service planning and for the HHS payment.

Conduct a functional assessment to determine the customer'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
- Housework

Functional Scale ADL's and IADL's 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.

Note: HHS payments may only be authorized for needs assessed at the 3 level or greater.

Time and Task

The worker will allocate time for each task assessed a rank of 3 or higher, based on the 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.

IADL Maximum Allowable Hours

There are monthly maximum hour limits on all IADLs 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.

These are maximums; as always, if the client needs fewer hours, that is what must be authorized. Hours should continue to be prorated in shared living arrangements. If there is a need for expanded hours, a request should be submitted to:

* * *

Service Plan Development

Address the following factors in the development of the service plan:

- The specific services to be provided, by whom and at what cost.
- The extent to which the Client does not perform activities essential to the caring for self. The intent of the Home Help program is to assist individuals to function as independently as possible. It is important to work with the recipient and the provider in developing a plan to achieve this goal.
- The kinds and amounts of activities required for the client's maintenance and functioning in the living environment.
- The availability or ability of a responsible relative or legal dependent of the client to perform the tasks the client does not perform. Authorize HHS only for those services or times which the responsible relative/legal dependent is unavailable or unable to provide.

Note: Unavailable means absence from the home, for employment or other legitimate reasons. Unable means the responsible person has disabilities of his/her own which prevent caregiving. These disabilities must be documented/verified by a medical professional on the DHS-54A.

- Do not authorize HHS payments to a responsible relative or legal dependent of the client.

- The extent to which others in the home are able and available to provide the needed services. Authorize HHS only for the benefit of the client and not for others in the home. If others are living in the home, prorate the IADL's by at least 1/2, more if appropriate.
- The availability of services currently provided free of charge. A written statement by the provider that he is no longer able to furnish the service at no cost is sufficient for payment to be authorized as long as the provider is not a responsible relative of the client.
- HHS may be authorized when the client is receiving other home care services if the services are not duplicative (same service for the same time period).

Adult Services Manual (ASM) 9-1-2008

Policy establishes the Department cannot pay for a personal care or chore provider if the beneficiary has a legally responsible relative available and able to provide the care the beneficiary may need. In this case the Department asserts the Appellant's wife is able to provide most of the care the Appellant requires. The Department worker authorized payment assistance for shopping, laundry and housework. The Appellant resides in his daughter's home. The Appellant's brother resides in the same home, along with his wife and three children. There are at least 5 adults sharing the same home. The Department's worker pro-rated payment for shopping and housework due to the number of adults residing in the home. The worker's notes indicate laundry is done separately, thus allowed 4 hours per month for laundry. The worker's notes further indicated the Appellant's spouse can help prepare meals, thus no payment for meal preparation was authorized.

The Appellant, through his daughter/care provider, contested the assertion that his wife is able to provide the care. The claim is that she is too depressed to perform the tasks and takes medication for her depression. The Department's representative objected to the assertion the spouse is depressed due to lack of evidence on the Medical needs form completed on behalf of the Appellant's spouse. This ALJ allowed the testimony regarding the spouse's depression, however is not giving this testimony any controlling weight. It does lack medical support. Furthermore, upon review of the proofs submitted, this ALJ was not persuaded the Appellant's spouse is unable/unavailable to provide all of the care needed (if any) by the Appellant. The testimony provided by the daughter/provider was not found persuasive by this ALJ. A review of the medical

information provided in the file on the DHS 54 did not support the claim from the daughter that her mother is not able to provide any and all care needed by her father. The DHS 54 indicates she has the following conditions: high blood pressure, osteoarthritis, carpal tunnel syndrome, dyshpidemia (per DHS 54) and obesity. The doctor indicates the conditions will not change, she is ambulatory and is able to provide meal preparation and shopping. Somehow, she is unable to provide laundry and housework services. There is no reason provided why the conditions listed will not change. This renders the medical information less of fully credible in this opinion of this ALJ. Certainly at least 2 of these medicals conditions can and do change. People have treatment for carpal tunnel syndrome, lose weight to treat obesity. Medications are taken to address osteoarthritis and high blood pressure. The medical information is less than persuasive that the Appellant's spouse is somehow disabled in any sense of the word. This ALJ is not required to give it controlling weight and does not.

The proofs submitted for the Appellant himself were also reviewed. There is a paucity of evidence the Appellant is even disabled to the extent he must have the tedious chores of meal preparation, laundry, housework and shopping performed on his behalf. He is only [redacted] years old. The form indicates he has peptic ulcer disease, high blood pressure, hyperlipidemia and osteoarthritis. There is no evidence he is physically limited in any way. He is physically capable of meeting all of his own personal care needs. This ALJ took testimony from the Appellant's daughter/provider that he is forgetful and that is why he has to have a provider. Also, she asserted her mother always did all of his care and but now she does not, so she has to do it for him. The fact that his wife used to do it for him and now does not does not evidence the Appellant has any actual need for physical assistance. He maybe used to having someone do everything for him, but that is an insufficient basis to approve any Home Help payments. The determination by the worker was based on a paucity of evidence of actual need and this ALJ finds the evidence less than persuasive, however, the worker's determination will not be disturbed as this ALJ was not present for the in home assessment.

The worker's determination the Appellant's spouse was able to meet the housework, shopping and meal preparation needs for the Appellant is certainly supported by the evidence of record. This ALJ was certainly not persuaded the payment approval was too low for the Appellant. The worker correctly applied the policy prohibiting payment to a legally responsible relative for tasks she is able to do and correctly applied the policy requiring pro-rating in cases where homes are shared with others.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department has properly authorized the home help assistance payments to the Appellant.

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

Jennifer Isiogu
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc: [redacted]

Date Mailed: 8/20/2009

***** NOTICE *****

The State Office of Administrative Hearings and Rules 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 State Office of Administrative Hearings and Rules 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.