STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH
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IN THE MATTER OF:

Docket No. 2010-24329 HHS
Case No. [redacted]

[redacted]

Appellant
_____/

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 Appellant's request for a hearing.

After due notice, a telephone hearing was held on [redacted] appeared on her own behalf. [redacted] (CMH), [redacted]; and [redacted] Appellant's neighbor, appeared as witnesses for the Appellant.

[redacted] represented the Department. [redacted] (ASW), appeared as a witness for the Department.

ISSUE

Did the Department properly deny Appellant's Home Help Services?

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 [redacted] year-old woman. (Exhibit 1, Page 3).

2. Appellant is a Medicaid beneficiary.

3. The Appellant's physical diagnoses are obesity and Type II diabetes. (Exhibit 2).

4. The Appellant also has a diagnosis of schizophrenia and receives services from CMH. The Appellant currently receives medication reviews and supports coordination from CMH. (Exhibit 1, Page 9).

5. Appellant lives independently in an apartment. (Exhibit 1, Page 9). The Appellant previously lived in a boarding-type situation where people assisted her with prompting and guiding.

6. In the past, CMH has provided Appellant with Assertive Community Treatment (ACT) a Medicaid-funded intensive mental health service including having a mental health worker go to Appellant's home as often as each day to make sure she was taking her psychiatric medications and prompting her to care for activities of daily living.

7. On [redacted], Appellant's ASW made a visit to Appellant's home pursuant to a request for Home Help Services for Appellant. During the assessment the ASW asked questions and received answers from the Appellant. (Exhibit 1, Pages 9-10).

8. During the assessment the ASW observed the Appellant and asked her questions about her functional abilities. The ASW noted that based on observations and Appellant's answers, the Appellant's limitations were not related to physical ability, rather her needs were verbal assistance due to her schizophrenia diagnosis, such as reminding, guiding and supervising. (Exhibit 1, Pages 9-10).

9. On [redacted], the Department sent a Negative Action Notice notifying Appellant that her HHS payments would be denied. (Exhibit 1, Pages 4-6).

10. On [redacted], the Department received Appellant's Request for Hearing, filled out by Appellant's CMH Supports Coordinator. (Exhibit 1, Page 3).

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 agencies.

The ASW testified that a comprehensive assessment was completed on [redacted], at which the Appellant was asked questions and provided answers.

Adult Services Manual (ASM 363, 9-1-08), pages 2-4 of 24, addresses the issue of assessment:

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 redetermination.
- A release of information must be obtained when requesting documentation from confidential sources and/or sharing information from the agency 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 for food and other necessities of daily living
- Laundry
- Housework

ASW Determination of ineligibility for HHS –

The ASW testified that during the reassessment she observed that the Appellant did not have any functional needs based on a physical diagnosis, but might need prompting, guiding and supervision needs due to he psychiatric diagnosis. The ASW testified that because the Appellant did not demonstrate any functional need for personal care services she was required, in accordance to policy, to deny the Appellant's HHS.

Appellant's CMH supports coordinator witness, Ms. Atwell, wrote in the request for hearing:

> …if a physician states that she needs a chore provider "how can a DHS worker with lower education override the physician's recommendation?"

The assumption of Appellant's CMH supports coordinator witness is wholly inaccurate. The Department's policy is unequivocal, although a doctor must verify a medical need, it is the ASW that determines need for personal care services. Adult Services Manual (ASM 363, 9-1-08), page 9 of 24 outlines the Department's policy regarding who is responsible for determining HHS authorization:

> **Necessity For Service**
>
> **The adult services worker is responsible for determining the necessity and level of need** for HHS based on:
>
> - Client choice.
>
> - A complete comprehensive assessment and determination of the client's need for personal care services.
>
> - **Verification of the client's medical need by a Medicaid enrolled medical professional**. The client is responsible for obtaining the medical certification of need. The Medicaid provider identification

> number must be entered on the form by the medical provider. (Underline added.)

The Department's policy included above clearly distinguishes that although a doctor must verify a medical need, it is the ASW that determines need for personal care services. The Department's determination that Appellant's did not have a functional need based on a physical diagnosis was proper.

Department determination that HHS is prohibited from paying for CMH-related services:

The Appellant's CMH supports coordinator Atwell and Appellant's neighbor described their concerns about Appellant's need. The needs articulated were needs based on her schizophrenia, not any physical condition. It became apparent that the needs articulated for Appellant were services for which HHS is prohibited from using Medicaid for funding. Instead both the CMH supports coordinator and neighbor described a need for services that fall under the service provision mandate of the [redacted] CMH. For example, both the CMH supports coordinator and neighbor testified that her psychiatric condition made it unsafe for her to use the stove to cook her meals. The Department representative and witness clarified that a psychiatric condition making it unsafe for Appellant to use the stove falls under the mandate of the CMH to provide prompting, guiding and supervision assistance through ACT, community living supports or skill building or similar services. Adult Services Manual (ASM 363, 9-1-08), page 9 of 24 unequivocally demonstrates that HHS cannot be used for reminding, guiding or encouraging:

> 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 April only be authorized for needs assessed at the 3 level or greater.

The above policy shows that HHS Medicaid funding cannot be used to provide meal preparation supervision or guiding. The Department determination that HHS is prohibited from paying for CMH-related services of reminding, guiding or encouraging for Appellant's need for those services was proper.

Appellant's CMH supports coordinator witness testified that Appellant's psychiatric condition was so severe that she used to receive ACT services from CMH and as such CMH staff would need to visit her home each day. The Appellant testified she used to live in a boarding-type setting where the owner or staff helped her each day. The Appellant's description sounded similar to an adult foster care home living situation.

There is not sufficient evidence to establish that the CMH is intentionally cost shifting to the HHS program. No party disputes that Appellant needs supervision over her activities of daily living. This Administrative Law Judge is concerned with Appellant's CMH supports coordinator's erroneous argument that prompting, reminding and guidance services, the very services CMH used to provide to Appellant, are HHS services and not the obligation of CMH. Appellant used to receive intensive daily mental health services from CMH in order to live in the community. Appellant is now living independently in the community without the obviously needed ACT, community living supports, or skill building services from CMH. Because the supports coordinator displayed confusion about the difference between what is responsibility of CMH and HHS with regard to community living and because the Appellant is a vulnerable person, the Administrative Law Judge feels compelled to refer this Decision and Order to [redacted] for review.

The Appellant bears the burden of proving by a preponderance of evidence that the Department's HHS denial was not according to policy. The Appellant did not provide a preponderance of evidence that the Department's termination was not according to policy. The Department must implement the Home Help Services program in accordance to Department policy.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly denied her Home Help Services.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

_____

Lisa K. Gigliotti
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

[redacted]
Docket No. 2010-24329 HHS
Hearing Decision & Order

cc: [redacted]

Date Mailed: 06/04/2010

***** 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.