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

[redacted],

Appellant
_____/

Docket No. 2010-49926 HHS
[redacted]

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.,* following the Appellant's request for a hearing.

After due notice, a hearing was held on [redacted]. The Appellant, [redacted], represented herself. Her daughter, [redacted], was present as the Appellant's witness. [redacted], Appeals Review Officer, represented the Department. [redacted], Adult Services Specialist (worker), and [redacted], Adult Services Supervisor, were present as Department witnesses.

ISSUE

Did the Department properly deny the Appellant's Home Help Services (HHS) application?

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 [redacted] o[redacted] Medicaid beneficiary, who applied for HHS from the Department of Human Services (DHS) in [redacted] (Exhibit 1, page 4)

2. The Appellant suffers from adhesive capsulitis of her left shoulder, neuralgia, and an unspecified disc disease. (Exhibit 1, page 8)

3. An initial in-home assessment was conducted on [redacted]. (Exhibit 1, page 7; Testimony of [redacted])

4. Based on her observations and the information obtained at the assessment, the worker determined that the Appellant need HHS Specifically, the Appellant appeared capable of performing the tasks she requested assistance with and she has a strong family support system to assist her with any tasks that she cannot perform. (Testimony of [redacted]; Exhibit 1, page 7)

5. On [redacted], the worker sent a Negative Action Notice, denying the services application. (Exhibit 1, pages 4-6)

6. The Appellant requested a formal, administrative hearing [redacted] (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 Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

The purpose of HHS is 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 client must be eligible for Medicaid in order to receive these services.

Medicaid/Medical Aid (MA)

Verify the client's Medicaid/Medical aid status.

> The client 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 363 9-1-2008), page 7 of 24*

Necessity For Service

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

- Client's 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. 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 client'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 client and/or medical professional.

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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 client in his/her place of residence.
- An interview must be conducted with the caregiver, if applicable.

- Observe a copy of the client'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 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
- 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.

* * *

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).

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Department policy addresses the need for supervision, monitoring, or guiding below:

> **Services Not Covered By Home Help Services**
>
> Do **not** authorize HHS for the following:
>
> • Supervising, monitoring, reminding, guiding 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;
> • Services provided free of charge;
> • Services provided by another resource at the same time;
> • Transportation - Medical transportation policy and procedures are in Services Manual Item 211.
> • Money management, e.g., power of attorney, representative payee;
> • Medical services;
> • Home delivered meals;
> • Adult day care
>
> *Adult Services Manual (ASM 363 9-1-2008), pages 14-15 of 24*

The worker testified that she denied the Appellant's HHS application for two reasons. First, it appeared to her that the Appellant was capable of performing her own IADLs. The worker explained that at the assessment, the Appellant requested assistance with housework, laundry, shopping, and meal preparation. The worker stated that they went over an assessment checklist, and the Appellant told the worker that she needed assistance with these tasks because of shoulder and neck pain. However, the worker testified that the Appellant was able to greet the worker at the door. Further, she got up and walked around the house several times during the assessment without any difficulty. The worker stated there was no indication that the Appellant was in any pain or discomfort and she did not use any assistive devices. Second, even if the Appellant did need assistance with her IADLs, she has a strong family support system to assist her.

The Appellant disagreed with the denial and stated that she does need assistance with her IADLs. She explained that she suffers from neck and shoulder pain and that she has to take pain medication that knocks her out. She further stated that sometimes her legs "go out" on her. However, there was no specific medical diagnosis in her DHS 54-A medical needs form to support that assertion. (Exhibit 1, page 8) The Appellant testified that she needs assistance with meal preparation because she drops things and her legs go out on her. She stated that she could do her own shopping if someone drives her, but she cannot do her laundry because she has fallen down her steps. The

Appellant also stated that she needs assistant with housework because she cannot do dishes—she drops them. But she stated that she can run a vacuum.

The Appellant initially testified that she did not tell the worker why she needed assistance with these tasks at the assessment because the worker did not ask her. However, she later stated that she did tell the worker about some of the tasks and admitted that the worker went over a checklist with her. In addition, the Appellant admitted that her family—primarily her daughter—currently assists her with her needs. She further stated that her [redacted] grandson lives with her, but he does not help her because he goes to school and has a job.

Because of the inconsistencies in her testimony and the lack of a medical diagnosis to support her claim regarding her legs, this Administrative Law Judge finds the Appellant's testimony less than credible. Further, this Administrative Law Judge agrees that the Appellant has sufficient family support to assist her with any needs that she does have. Therefore, this Administrative Law Judge concludes that the Department's decision to deny the Appellant's application was in accord with policy.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly denied the Appellant's HHS application.

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

Kristin M. Heyse
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc: [redacted]

Date Mailed: 11/19/2010

***** 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.