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

IN THE MATTER OF:

Docket No. 2011-37870 HHS
Case No.

,

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 hearing was held on . , Appellant's legal guardian, appeared and testified on Appellant's behalf. from the Community Mental Health (CMH) also testified on Appellant's behalf. , Appeals Review Officer, represented the Department of Community Health. , Appellant's Adult Services Worker (ASW) at the DHS-HHS Office, appeared as a witness for the Department.

ISSUE

Did the Department properly deny Appellant's request for additional Home Help Services (HHS)?

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 year-old Medicaid beneficiary.

2. is Appellant's legal guardian and has been since . (Exhibit 1, page 5).

3. Appellant has been diagnosed by a physician with mental retardation, a history of breast cancer, and cerebral palsy. (Exhibit 1, page 15).

4. Appellant has been receiving 102 hours and 15 minutes of HHS per month, with a monthly care cost of . (Exhibit 1, page 11).

5. On , ASW conducted a home visit with Appellant as part of a six-month review. (Exhibit 1, page 15).

6. Appellant's guardian had notice of the home visit, but was unable to attend. (Testimony of).

7. During the home visit, ASW spoke with from which is the agency that provides the HHS services for Appellant. (Exhibit 1, pages 7, 14; Testimony of ASW .

8. from told ASW that Appellant was pretty healthy and that her medical conditions had not changed. (Exhibit 1, page 7; Testimony of ASW). During the hearing, also testified that Appellant's medical conditions had not changed prior to home visit and that Appellant had not been hospitalized since became her guardian. (Testimony of).

9. from also informed ASW that Appellant did not require any additional services. (Exhibit 1, page 7; Testimony of ASW).

10. Based on her assessment and information provided by Appellant's provider, ASW renewed Appellant's HHS as previously authorized. (Exhibit 1, pages 6-12; Testimony of ASW .

11. On , the Department received Appellant's Request for Hearing. In that request, Appellant's guardian states that she wants a hearing in order to obtain additional HHS for Appellant. (Exhibit 1, page 4).

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 private or public agencies.

Adult Services Manuals 361 (6-1-07) (hereinafter "ASM 361") and Adult Services Manual 363 (9-1-08) (hereinafter "ASM 363") address the issues of what services are included in Home Help Services and how such services are assessed:

> **Home Help Payment Services**
>
> Home help services (HHS, or personal care services) are non-specialized personal care service activities provided under ILS to persons who meet eligibility requirements.

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.

Personal care services which are eligible for Title XIX funding are limited to:

Activities of Daily Living (ADL)

- Eating.
- Toileting.
- Bathing.
- Grooming.
- Dressing.
- Transferring.
- Mobility.

Instrumental Activities of Daily Living (IADL)

- Taking medication.
- Meal preparation/cleanup.
- Shopping for food and other necessities of daily living.
- Laundry.
- Housework.

(ASM 361, page 2 of 5)

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 redetermination.

- 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
- Light 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 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.

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.

(ASM 363, pages 2-4 of 24)

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. The Medical Needs form must be signed and dated by one of the following medical professionals:

  - Physician.
  - Nurse practitioner.
  - Occupational therapist.
  - Physical therapist.

(ASM 363, page 9 of 24)

Services not Covered by Home Help Services

Do **not** authorize HHS payment for the following:

- Supervising, monitoring, reminding, guiding or encouraging (functional assessment rank 2);

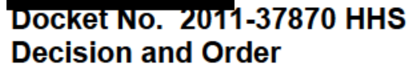
- Services provided for the benefit of others;

- 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 - See Program Administrative Manual (PAM) 825 for medical transportation policy and procedures.
- Money management, e.g., power of attorney, representative payee;
- Medical services;
- Home delivered meals;
- Adult day care.

(ASM 363, pages 14-15 of 24)

On [redacted], ASW [redacted] completed a home visit and comprehensive assessment as part of the annual review of Appellant's case. Following that assessment, the ASW renewed the HHS previously authorized. Appellant's guardian disputes that renewal and argues that Appellant requires additional services. She also testified that the agency providing Appellant's care has been providing more care than it is being paid for.

The Department's decision to deny Appellant's request for additional HHS services must be sustained. This Administrative Law Judge reviews the Department's decision based on the information the Department had at the time of its decision. Here, ASW [redacted] testified and wrote in her notes that, during the home visit, she was expressly told by Appellant's provider that Appellant was pretty healthy and did not require any additional services. (Exhibit 1, page 7; Testimony of ASW [redacted]). That testimony is uncontradicted and this Administrative Law Judge finds it to be credible. Appellant's guardian may have testified during the hearing that Appellant needs more services (Testimony of [redacted]) and the private agency that provides the care may have submitted a form prior to the hearing that detailed the care it provides (Exhibit 4, page 2), but that evidence was not before the Department at the time it renewed Appellant's HHS at the previously authorized amount. Appellant and her guardian are free to request additional services again in the future, but the denial in this case must be affirmed in light of the information available to the Department at the time it made its decision.



DECISION AND ORDER

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

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

Steven Kibit
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:

Date Mailed: 8/17/2011

***** NOTICE *****
The Michigan Administrative Hearing System 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 Michigan Administrative Hearing System 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 March 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.