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. 2011-49400 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 , the Appellant, appeared on her own behalf. , sister, and , sister, appeared as witnesses for the Appellant. , Appeals Review Officer, represented the Department. , Adult Services Worker, appeared as a witness for the Department. The record was left open until , for the Appellant to provide documentation from her neurologist. No documentation was submitted by the Appellant. The Department submitted a copy of a , DHS 54-A Medical Needs form, which has been entered as Exhibit 2.

ISSUE

Did the Department properly terminate the Appellant's Home Help Services (HHS) case?

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 year-old Medicaid beneficiary.

2. The Appellant has been diagnosed with multiple sclerosis, diabetes mellitus, and hypertension. (Exhibit 1, page 14, Exhibit 2)

3. The Appellant had been receiving HHS at 56 hours and 14 minutes per month for assistance with bathing, grooming, dressing, toileting, laundry, shopping, housework, and meal preparation. (Exhibit 1, page 12 and ASW Testimony)

4. On [redacted], an Adult Services Worker (ASW) made a visit to the Appellant's home to conduct a Home Help Services assessment. The Appellant's case had been transferred and this was this ASW's first time assessing the Appellant. (Exhibit 1, pages 8-10 and ASW Testimony)

5. At the time of the home visit, the Appellant's sister was residing with the Appellant and the Appellant's children, ages 12 and 9. (Exhibit 1, page 8)

6. On [redacted], the Appellant's doctor completed a DHS-54A Medical Needs form certifying the Appellant's need for assistance with mobility, meal preparation, shopping, laundry and housework. The doctor also indicated that Appellant had difficulty walking and would need someone to accompany her to medical appointments. (Exhibit 2)

7. As a result of the information gathered from the assessment, the ASW determined that the Appellant's condition did not appear to be severe enough to meet the qualifications of the HHS program. (Exhibit 1, pages 5-6)

8. On [redacted], the Department sent an Advance Negative Action Notice to the Appellant indicating that her Home Help Services case would terminate effective [redacted]. (Exhibit 1, pages 5-7)

9. On [redacted], the Appellant's Request for Hearing was received. (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 Manual (ASM 363, 9-1-08), pages 2-15 of 24 addresses the issue of assessment:

> **COMPREHENSIVE ASSESSMENT**
>
> The Adult Services Comprehensive Assessment (FIA-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. 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:

- 5 hours/month for shopping
- 6 hours/month for light housework
- 7 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.

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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 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-54-A.

- 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 same time period).

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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.

Adult Services Manual (ASM) 363, 9-1-2008,
Pages 2-15 of 24

The Adult Services Worker (ASW) completed a home visit as part of a comprehensive assessment on [redacted]. The ASW testified that there were discrepancies between the Appellant's reports of her abilities and needs for assistance and the ASW's observations of the Appellant during the home visit. The Appellant has repeatedly reported dizziness, but the ASW testified she did not observe any gait irregularities or instability when the Appellant was walking during the home visit. (ASW Testimony)

However, the ASW observed the Appellant walking with assistance, specifically the Appellant had her hands placed on her sister's shoulder. (Exhibit 1, page 8) This is consistent with the DHS-54A Medical Needs form, where the Appellant's physician indicated that the Appellant has difficulty walking and needs someone to accompany her to medical appointments. (Exhibit 2) This would also support a ranking of 3 for mobility, as some physical assistance is required for this activity.

The evidence does not support the ASW's rankings and resulting determination that the Appellant's condition is not severe enough to meet the qualifications of the HHS program. Accordingly, the termination can not be upheld. However, the physician that completed the [redacted], DHS-54A Medical Needs form did not certify a medical need for assistance with all of the ADL's previously authorized for HHS hours in the Appellant's case. (Exhibit 2 and ASW Testimony) The Appellant was going to provide additional documentation from her neurologist regarding her abilities and needs for assistance after her next appointment with this specialist. The Appellant's HHS case should be reinstated until a new assessment can be completed to determine the Appellant's ongoing needs for assistance. The Appellant may wish to provide the documentation from her neurologist at that assessment to support a need for ongoing assistance with the previously authorized ADLs.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department improperly terminated the Appellant's HHS case based on the available information.

IT IS THEREFORE ORDERED THAT:

> The Department's decision is REVERSED. The Appellant's HHS case shall be reinstated retroactive to the [redacted], effective date of the termination. The Department shall also conduct a new assessment to determine an appropriate ongoing HHS authorization.

____
Colleen Lack
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc: [redacted]

Date Mailed: _11/17/2011______

***** 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 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.