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. 2012-23467 HHS

[redacted] [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 hearing was held on [redacted] [redacted], Advocate, The Disability Network, represented the Appellant. [redacted], the Appellant, appeared and testified. [redacted], friend and caregiver, appeared as a witness for the Appellant. [redacted], Appeals Review Officer, represented the Department. [redacted], Adult Services Worker ("ASW"), and [redacted], Adult Services Supervisor, appeared as witnesses for the Department. The hearing record was left open for the Department to fax in the documentation the Appellant brought to the hearing. These documents were received on [redacted]. (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 Medicaid beneficiary who has been authorized for Home Help Services.

2. The Appellant has been diagnosed with lumbar back pain with radiculopathy, degenerative joint disease, spinal stenosis, and arthritis. The Appellant underwent spinal fusion surgery in August 2011. (Exhibit 1, page 11, Exhibit 2, pages 3-4)

3. The Appellant had only been receiving HHS for assistance with the Instrumental Activity of Daily Living ("IADL") of housework. (Exhibit 1, page 13)

4. On [redacted], the ASW went to the Appellant's home and completed an in-home assessment for a review of the Appellant's HHS case. The Appellant reported her recent surgery, was noted to be wearing a brace and using a bone growth stimulator. The Appellant did not report a need for assistance with any Activity of Daily Living ("ADL"). (ASW Testimony and Exhibit 1, page 9)

5. Based on the available information the ASW concluded that the Appellant did not have a medical need for hands on assistance with any ADL. (ASW Testimony, Exhibit 1, page 12)

6. On [redacted] the Department sent the Appellant an Advance Action Notice which informed her that effective [redacted], her HHS case would be terminated based on the new policy which requires the need for hands on services with at least one ADL. (Exhibit 1, pages 5-8)

7. On [redacted]2, the Appellant's request for hearing was received by the Michigan Administrative Hearing System. (Exhibit 1, page 4)

8. On [redacted], the Appellant's physician wrote a letter indicating the Appellant's current restrictions were no lifting over 10 lbs., no bending, no twisting, turning, pushing, pulling, over the head lifting or reaching and no climbing. (Exhibit 2, page 4)

9. On [redacted] the Appellant's physician wrote a letter indicating the Appellant would need [redacted] hours per day of attendant care until [redacted]. (Exhibit 2, 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 private or public agencies.

Adult Services Manual (ASM 120, 11-1-2011), pages 2-5 of 6 addresses the adult services comprehensive assessment:

> **INTRODUCTION**
>
> The DHS-324, Adult Services Comprehensive Assessment is the primary tool for determining need for services. The

comprehensive assessment must be completed on **all open independent living services cases**. ASCAP, the automated workload management system, provides the format for the comprehensive assessment and all information will be entered on the computer program.

Requirements

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.
- The assessment may also include an interview with the individual who will be providing home help services.
- A new face-to-face assessment is required if there is a request for an increase in services before payment is authorized.
- A face-to-face assessment is required on all transfer-in cases before a payment is authorized.
- 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.
    - Use the DHS-26, Authorization to Release Information, when requesting client information from another agency.
    - Use the DHS-1555, Authorization to Release Protected Health Information, if requesting additional medical documentation; see RFF 1555. The form is primarily used for APS cases.
- Follow rules of confidentiality when home help cases have companion APS cases, see SRM 131 Confidentiality.

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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

ADLs and IADLs 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.

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

An individual must be assessed with at least one activity of daily living in order to be eligible to receive home help services.

Note: If the assessment determines a need for an ADL at a level 3 or greater but these services are not paid for by the department, the individual would be eligible to receive IADL services.

Example: Ms. Smith is assessed at a level 4 for bathing however she refuses to receive assistance. Ms. Smith would be eligible to receive assistance with IADLs if the assessment determined a need at a level 3 or greater.
See ASM 121, Functional Assessment Definitions and Ranks for a description of the rankings for activities of daily living and instrumental activities of daily living.

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Time and Task

The specialist 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.

An assessment of need, at a ranking of 3 or higher, does not automatically guarantee the maximum allotted time allowed by the reasonable time schedule (RTS). **The specialist must assess each task according to the actual time required for its completion.**

Example: A client needs assistance with cutting up food. The specialist would only pay for the time required to cur the food and not the full amount of time allotted under the RTS for eating.

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

> Proration of IADLs
>
> If the client does not require the maximum allowable hours for IADLs, authorize only the amount of time needed for each task. Assessed hour for IADLs (except medications) must be prorated by **one half** in shared living arrangements where other adults reside in the home, as home help services are **only** for the benefit of the client.
>
> **Note:** This does not include situations where others live in adjoined apartments/flats or in a separate home on shared property and there is no shared, common living area.
>
> In shared living arrangements, where it can be **clearly** documented that IADLs for the eligible client are completed separately from others in the home, hours for IADLs do not need to be prorated.
>
> **Example:** Client has special dietary needs and meals are prepared separately; client is incontinent of bowel and/or bladder and laundry is completed separately; client's shopping is completed separately due to special dietary needs and food is purchased from specialty stores; etc.
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> *Adult Services Manual (ASM) 120, 11-1-2011,*
> *Pages 1-4 of 6*

Adult Services Manual (ASM 115, 11-1-2011), pages 1 of 3 also addresses the program requirements, including medical certification:

> **MEDICAL NEEDS FORM (DHS-54A)**
>
> The DHS-54A, Medical Needs form must be signed and dated by a medical professional certifying a medical need for personal care services. The medical professional must be an enrolled Medicaid provider and hold one of the following professional licenses:
>
> - Physician (M.D. or D.O.).
> - Nurse practitioner.
> - Occupational therapist
> - Physical therapist.
>
> **Note:** A physician assistant (PA) is not an enrolled Medicaid provider and **cannot** sign the DHS-54A.

> The medical needs form is only required at the initial opening for SSI recipients and disabled adult children (DAC). All other Medicaid recipients must have a DHS-54A completed at the initial opening and annually thereafter.
>
> The client is responsible for obtaining the medical certification of need but the form must be completed by the medical professional and not the client. The National Provider Identifier (NPI) number must be entered on the form by the medical provider and the medical professional must indicate whether they are a Medicaid enrolled provider.
>
> The medical professional certifies that the client's need for service is related to an existing medical condition. **The medical professional does not prescribe or authorize personal care services**. Needed services are determined by the comprehensive assessment conducted by the adult services specialist.
>
> *Adult Services Manual (ASM) 115, 11-1-2011, Pages 1 of 3 (emphasis in original)*

The Appellant had only been authorized for assistance with the IADL of housework. (Exhibit 1, page 13)

On [redacted] the ASW went to the Appellant's home and completed an in-home assessment for a review of the Appellant's HHS case. The Appellant reported her [redacted] surgery, was noted to be wearing a brace and using a bone growth stimulator. The ASW went over the ADLs and IADLs and the Appellant did not report a need for assistance with any ADL. (ASW Testimony and Exhibit 1, page 9) Based on the available information, the ASW concluded that the Appellant did not have a medical need for hands on assistance with any ADL. (ASW Testimony, Exhibit 1, page 12)

The Appellant disagrees with the termination. The Appellant has received hands on assistance as needed from [redacted] with a variety of activities including: bathing, medication or treatment administration, carrying shopping bags, personal care and whatever else was needed. [redacted] is not the Appellant's enrolled HHS provider, rather, she had been assisting as an unpaid caregiver. (Appellant and Caregiver Testimony) The Appellant testified that she was aware the Department was only paying her HHS provider for housework and did not think she ever told the ASW anyone else was helping her. (Appellant Testimony)

The Appellant submitted letters from her doctor dated in March and [redacted] indicating current restrictions, limitations and a need for [redacted] hours of attendant care daily. (Exhibit 2, pages 3-4) This documentation would not have been available at the time of the [redacted] assessment. Further, Adult Services Manual policy states that the physician only certifies a medical need for assistance, but does not prescribe or authorize services.

There was insufficient evidence presented to establish that the Appellant notified the ASW that she needed hands on assistance with at least one ADL at the time of the [redacted] assessment. The Appellant was aware the Department was only paying her HHS provider for housework, did not report a need for assistance with any ADLs and did not tell the ASW anyone else was helping her. Accordingly, the ASW properly applied Adult Services Manual policy and took action to terminate the Appellant's HHS case because the Appellant did not require hands on assistance with at least one ADL based on the information available at that time.

The Appellant can always reapply for the HHS program and provide information supporting her needs for hands on assistance with ADLs.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly determined that the Appellant is ineligible for HHS and terminated the Appellant's HHS case based on the information available at that time.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

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

cc: [redacted]

Date Mailed: 5-4-12

***** 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.