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:

[redacted]

Docket No. 2012-24704 HHS
Case No. [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], Son, appeared on the Appellant's behalf. [redacted], the Appellant, was present. [redacted] Appeals Review Officer, represented the Department. [redacted], Adult Services Worker ("ASW"), and [redacted], Adult Services Supervisor, appeared as witnesses for the Department.

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. On or about [redacted], the Department received a referral for the Appellant for the HHS program. (Exhibit 1, page 5)

2. On [redacted], the ASW went to the Appellant's home and completed an in-home initial assessment. It was reported that the Appellant can bathe and dress himself, as well as take his own medications but his provider does the cooking, housework, laundry, and shopping. (Exhibit 1, page 8)

3. The ASW ranked the Appellant as a level 1 for bathing, grooming, dressing, toileting, transferring, eating, and mobility, a level 2 for medication, a level 3 for shopping, and a level 4 for housework, laundry and meal preparation. (Exhibit 1, page 9)

4. The Appellant has a monthly deductible, or spend-down, that must be met to be eligible for Medicaid for the remainder of each month. The Appellant's monthly Medicaid spend-down was [redacted] in [redacted] and [redacted], [redacted] from [redacted] through [redacted], [redacted] in [redacted], and [redacted] starting [redacted]. (Exhibit 1, page 11)

5. Department policy requires Medicaid eligibility in order to receive Home Help Services. (Adult Services Manual (ASM) 362, December 1, 2007, pages 1-2 of 5, Adult Services Manual (ASM) 363, September 1, 2008, page 7 of 24, Adult Services Manual (ASM) 105, November 1, 2011, pages 1-2 of 3)

6. On [redacted], the Department sent the Appellant an Advance Action Notice which informed him that his HHS case was terminated based on having a spend-down that must be met each month. (Exhibit 1, pages 5-7)

7. On [redacted], the Appellant's Request for Hearing was received by the Michigan Administrative hearing System. (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.

The Adult Services Manual (ASM) addresses eligibility for Home Help Services. The policy at the time of the Appellant applied for HHS stated:

> ### ELIGIBILITY FOR HOME HELP SERVICES
>
> Home help services (HHS) are defined as those which the department 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 deductible obligation has been met.

The client must have a scope of coverage of:

- 1F or 2F, **or**
- 1D or 1K (Freedom to work), **or**
- 1T (Healthy Kids Expansion).

Clients with eligibility status of 07 (Income scale 2-Non MA) and scope of coverage 20 or 2B are **not** eligible for Medicaid until they have met their MA deductible obligation.

An ILS case may be opened (service program 9) to assist the client in becoming MA eligible. However, do **not** authorize HHS payment prior to the MA eligibility date. The payment must be prorated if the eligibility period is less than the full month. To prorate, divide the monthly care cost by the number of days in the month. Then, multiple (sic) that daily rate by the number of eligible days.

Note: A change in the scope of coverage by the eligibility specialist (ES) will generate a DHS-5S for cases active to services programs 1, 7, and 9.

Medicaid Personal Care Option

Clients in need of home help personal care services may become eligible for MA under the Medicaid personal care option.

Discuss this option with the client and the ES.

Conditions of eligibility:

- The client meets all MA eligibility factors except income.
- An ILS services case is active on CIMS (program 9).
- The client is eligible for personal care services.
- The cost of personal care services is **more** than the MA excess income amount.

- The client agrees to pay the MA excess income amount to the home help provider.

Adult Services Manual (ASM) 363, 9-1-2008 pages 7-8 of 24.

The Adult Service Manual Policy was updated effective November 1, 2011:

> **Requirements**
>
> Home help eligibility requirements include **all** of the following:
>
> - Medicaid eligibility.
> - Certification of medical need.
> - Need for service, based on a complete comprehensive assessment (DHS-324) indicating a functional limitation of level 3 or greater for activities of daily living (ADL).
> - Appropriate Level of Care (LOC) status.
>
> **Medicaid/Medical Aid (MA)**
>
> The client may be eligible for MA under one of the following:
>
> - All requirements for Medicaid have been met.
> - MA deductible obligation has been met.
>
> The client must have a scope of coverage of either:
>
> - 1F or 2F.
> - 1D or 1K (Freedom to Work).
> - 1T (Healthy Kids Expansion).
>
> Clients with a scope of coverage 20, 2C or 2B are **not** eligible for Medicaid until they have met their MA deductible obligation.
>
> **Note:** A change in the scope of coverage in Bridges will generate a system tickler in ASCAP for active services cases.
>
> Medicaid Personal Care Option
>
> Clients in need of home help personal care services may become eligible for MA under the Medicaid personal care option.
>
> Discuss this option with the client and coordinate implementation with the eligibility specialist.

Conditions of eligibility:

- The client meets all Medicaid eligibility factors except income.
- An independent living services case is open.
- The client is eligible for home help services.
- The cost of personal care services is **more** than the MA excess income amount.

If **all** the above conditions have been satisfied, the client has met MA deductible requirements. The adult services specialist can apply the personal care option in ASCAP. The deductible amount is entered on the **MA History** tab of the Bridges **Eligibility** module in ASCAP.

Use the DHS-1210, Services Approval Notice to notify the client of home help services approval when MA eligibility is met through this option. The notice must inform the client that the home help payment will be affected by the deductible amount, and that the client is responsible for paying the provider the MA deductible amount each month.

Do **not** close a case eligible for MA based on this policy option if the client does not pay the provider. It has already been ensured that MA funds will not be used to pay the client's deductible liability. The payment for these expenses is the responsibility of the client.

Changes in the client's deductible amount will generate a system tickler from Bridges.

MA eligibility under this option **cannot** continue if the cost of personal care becomes **equal to or less than** the MA excess income amount.

Adult Services Manual (ASM) 105, 11-1-2011 pages 1-2 of 3

The Appellant's needs for assistance at home at the time of the [redacted] initial assessment were not contested in this case. The ASW's rankings a determined that the Appellant needed hands on assistance with housework, shopping, laundry, and meal preparation based on the information available at that time. (Exhibit 1, page 9)

Rather, the Appellant's HHS application was denied due to his Medicaid eligibility status. Department policy requires a HHS participant to have Medicaid coverage with a qualifying scope of coverage in order to be eligible for the Home Help Services program. Individuals who have met their monthly Medicaid deductible, or spend-down, are eligible for Home Help Services. An individual with a spend-down can also become

eligible for Home Help Services if the monthly care cost exceeds the spend-down and the individual agrees to pay the Home Help Services provider the spend-down amount. *Adult Services Manual (ASM) 363, 9-1-2008 pages 7-8 of 24, Adult Services Manual (ASM) 105, 11-1-2011, pages 1-2 of 3.*

In the present case, the Appellant had a monthly spend-down of [redacted] in [redacted] and [redacted], [redacted] from [redacted] through [redacted], [redacted] in [redacted], and [redacted] starting [redacted]. (Exhibit 1, page 11) As discussed during the telephone hearing proceedings, this ALJ does not have jurisdiction over the spend-down determination. The Appellant can discuss issues regarding the spend-down with the Medicaid Eligibility Specialist assigned to his case and/or file separate hearing requests to contest spend-down determinations.

The ASW credibly testified that there has been no determination that the Appellant has met his spend-down obligation over the relevant months. The ASW did not develop a specific time and task authorization to determine the monthly HHS care cost the Appellant was potentially eligible for. However, the ASW explained that the monthly HHS care cost for the four activities she determined the Appellant had a need for hands on assistance with would not have been enough to meet the Appellant's monthly spend-down. The Adult Services Manual Policy has maximum authorizations for these Instrumental Activities of Daily Living ("IADLs"). The policy only allows for up to 6 hours for housework, 5 hours for shopping, 7 hours for laundry and 25 hours for meal preparation each month. *Adult Services Manual (ASM 363, 9-1-08), pages 3-4 of 24, Adult Services Manual (ASM) 120, 11-1-2011, page 4 of 6.* The ASW testified that the hourly payment rate for HHS is $8.00. Accordingly, even if the Appellant received the maximum of 43 hours per month for these activities, the potential HHS monthly care cost would only be $344.

There was no evidence establishing that the Appellant met his monthly spend-down. The amount of the Appellant's monthly spend-down exceeds the potential HHS payment the he would receive from the Department each month. Therefore, the Appellant does not qualify for the Home Help Services program at this time.

The Appellant's son testified that the Appellant will soon be hospitalized and undergo bypass surgery, which they anticipate will result in significant additional functional limitations. As explained during the telephone hearing proceedings, the Appellant may wish to reapply for the HHS program with documentation of his surgery and functional limitations as his condition changes. A significant increase in needs for hands on assistance may result in a monthly care cost greater than his spend-down obligation. It should also be noted that the HHS policy changed effective [redacted] and an individual is no longer eligible for HHS if they only need assistance with IADLs (taking medications, housework, shopping, laundry, and meal preparation). A need for hands on assistance with at least one Activity of Daly Living ("ADL") (eating, toileting, bathing, grooming, dressing, transferring, and mobility) is required to be eligible for HHS. *Adult Services Manual (ASM) 363, 9-1-2008,* Interim Policy Bulletin ASB 2011-001 October 1, 2011, and Adult Services Manual (ASM) 120, 11-1-2011, Pages 1-4 of 6.

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 denied the Appellant's HHS application based on an unmet monthly spend-down.

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: 4/17/2012

***** 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.