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. 2012-33687 HHS

[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] Attorney, appeared on behalf of the Appellant, who was present and testified. [redacted] Appeals Review Officer, represented the Department. Her witness was [redacted], ASW supervisor.

Also present [redacted], Law Clerk to Attorney [redacted].

PRELIMINARY MATTER

- At hearing the record was left open to permit the Appellant an opportunity to correct and amend the DHS-54A Medical Needs form found in Appellant's Exhibit #2 – date of execution and certification at section I. On review, as a post assessment document this newest 54A Medical Needs form carried little weight relative to the action taken by the Department to terminate HHS.

- Appellant's Exhibit #3 was admitted over the Department's relevance objection. On review, this document was afforded minor weight owing to the dated nature of the information

ISSUE

Did the Department properly terminate the Appellant's Home Help Services for lack of eligibility?

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]-year-old Medicaid beneficiary. (Appellant's Exhibit #1)

2. The Appellant alleges disability through schizophrenia, paranoid type. (*See* Testimony, Department's Exhibit A p. 11, and Appellant's Exhibit #2)

3. The Appellant has limited cognitive ability. (*See* Testimony and Appellant's Exhibit #3)

4. The Appellant's representative said that the Appellant cannot take care of himself, is unemployable and at risk of losing his housing absent Home Help services. (See Testimony)

5. The Department's witness testified that her ASW employee [not present for hearing] observed the Appellant on in-home assessment [redacted] and then discovered no certification of need on review of the DHS-54A medical needs form. She terminated HHS for lack of eligibility. (*See* Testimony and Department's Exhibit A, p. 9)

6. The Department's evidence also demonstrated no ranking at a level of three "3" or greater for any ADL or personal care service. (*See* Testimony and Department's Exhibit A, p. 12)

7. The Department sent the Appellant an Advance Negative Action Notice on [redacted] terminating services effective [redacted] (Department's Exhibit A, pp. 2, 5)

8. The Appellant's further appeal rights were contained in the Advance Negative Action Notice.

9. The request for hearing on the instant appeal was received by the Michigan Administrative Hearing System for the Department of Community Health on [redacted] (Appellant's Exhibit #1)

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.

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[1] by a medical professional.

[1] *See* Adult Service Manual (ASM) 105, Medical Needs Certification page 2 of 3, 11-1-2011 and ASM 115, Medical Needs Form (DHS 54A), page 1 of 3, 11-1-2011.

COMPREHENSIVE ASSESSMENT

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 must 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.
- 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.

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Adult Service Manual (ASM), §120, page 1 of 6, 11-1-2011.

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Changes in the home help eligibility criteria:

Home Help Eligibility Criteria
To qualify for home help services, an individual must require assistance with at least one activity of daily living (ADL) assessed at a level 3 or greater. The change in policy must be applied to any new cases opened on or after October 1, 2011, and to all ongoing cases as of October 1, 2011.

Comprehensive Assessment Required Before Closure
Clients currently receiving home help services must be assessed at the next face-to-face contact in the client's home to determine continued eligibility. If the adult services specialist has a face-to-face contact in the client's home prior to the next scheduled review/redetermination, an assessment of need must take place at that time.

Example: A face-to-face review was completed in August 2011; the next scheduled review will be in February 2012. The specialist meets with the client in his/her home for a provider interview in December 2011. Previous assessments indicate the client only needing assistance with instrumental activities of daily living (IADL). A new comprehensive assessment must be completed on this client.

If the assessment determines a need for an ADL at level 3 or greater but these services are **not** paid for by the department, or the client refuses to receive assistance, the client would **continue** to be eligible to receive IADL services.

If the client is receiving only IADLs and does **not** require assistance with at least one ADL, the client no longer meets eligibility for home help services and the case must close after negative action notice is provided.

Each month, beginning with October, 2011, clients with reviews due who only receive IADL services must take priority.

Negative Action Notice
The adult services specialist must provide a DHS-1212, Advance Negative Action notice, if the assessment determines the client is no longer eligible to receive home help services. The effective date of the negative action is ten business days after the date the notice is mailed to the client.

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Right to Appeal
Clients have the right to request a hearing if they disagree with the assessment. If the client requests a hearing within ten business days, do not proceed with the negative action until after the result of the hearing.

Explain to the client that if the department is upheld, recoupment must take place back to the negative action date if payments continue. Provide the client with an option of

> continuing payment or suspending payment until after the hearing decision is rendered.
>
> If the client requests a hearing after the 10-day notice and case closure has occurred, do not reopen the case pending the hearing decision. If the department's action is reversed, the case will need to be reopened and payment re-established back to the effective date of the negative action. If the department's action is upheld, no further action is required.
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> ****
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> Adult Service Bulletin (ASB) 2011-001;
> *Interim* Policy Bulletin Independent Living Services (ILS)
> Eligibility Criteria, pp. 1–3, October 1, 2011

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The Department witness testified that following in-home assessment it was determined that the Appellant was no longer eligible for HHS because his physician failed to certify a need for home help on DHS-54A Medical Needs form. Furthermore, the Department's exhibit and the testimony of witness Spencer explained that the Appellant was not receiving, nor was he certified to receive assistance with any activities of daily living [personal care].

The Appellant's representative argued that the Appellant required assistance because "of his cognitive function" in addition to his diagnosis of schizophrenia. She explained that the reporting of his employment as a janitor was outdated and inconsequential protected employment. The Appellant might have worked one or [redacted] – then he never returned to his employer. His total compensation was [redacted] She also explained – and it was developed on cross examination – that the only involvement by Community Mental Health (CMH) is a fortnightly injection administered at the local mental health clinic.

It is the province of the ASW to determine eligibility for services; the ASM requires an in-home comprehensive assessment of HHS recipients. Based on long standing policy the Appellant is not eligible for HHS absent a certification of medical need. Furthermore, new policy requires that an HHS recipient must require at least one (1) ADL requiring hands on service at the three (3) ranking or higher in order to remain eligible for HHS. Of all the DHS-54A Medical Needs forms submitted[2] in this contest - no document certified a need for assistance with personal care.

The Appellant failed to preponderate his burden of proof that the Department erred in terminating his HHS because at the time of his assessment the relevant DHS-54A Medical Needs form failed to certify a need for assistance through the Home Help

[2] *See* Department's Exhibit A, p. 10; Appellant's Ex. 2, p. 3; Appellant's Ex. 2 (*amended*) p. 3 and Appellant's Ex. 3, p. 2

Services program. Furthermore, there was no certification for need with assistance of any ADL.

Whether the Appellant's ability has eroded to any significant degree since the [redacted] assessment is unknown. The Appellant has not reported a change in condition to his ASW. However, the Department's witness explained that the newly acquired DHS-54A Medical Needs form dated [redacted] would be useful information for a new referral of services. (Appellant's Exhibit #2 – amended version)

On review, the cognitive limits of the Appellant were apparent at hearing, but his mental illness appeared to be well controlled. While the Appellant's circumstance is troublesome, the ALJ has no authority to alter HHS policy and observes further that the Appellant would also be ineligible for HHS under the *Interim Policy* adopted in [redacted] as it makes no exception for the provision of HHS - absent satisfaction of the ADL requirement with a ranking of 3 or greater.

Since the Appellant, by virtue of this assessment, has now exhausted his available services under the HHS program, it is incumbent on the ASW to advocate for the Appellant in receiving CMH sponsored Community Living Supports (CLS) to address the monitoring and supervision needs articulated by both parties at hearing. [ASM 125, Coordination with Other Services, pp. 1, 2 of 10, November 1, 2011]

DECISION AND ORDER

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

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

Dale Malewska
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc: [redacted]

Date Mailed: 6-27-12

***** 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.