STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH
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IN THE MATTER OF:

[redacted],

Docket No. 2012-4598 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], the Appellant, appeared on her own behalf. [redacted], Appeals Review Officer, represented the Department. [redacted], Adult Services Worker, and [redacted], Adult Services Supervisor, appeared as witnesses for the Department.

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 [redacted] year old Medicaid beneficiary who has been receiving HHS.

2. The Appellant has been diagnosed with depression/anxiety, vertigo-migraine headaches, disc disorder, and Lupus. (Exhibit 1, page 12)

3. The Appellant had been authorized for assistance with bathing, dressing, medication, and meal preparation totaling 18 hours and 33 minutes per month with a total monthly care cost of [redacted]. The Appellant's mother was her HHS provider. (Exhibit 1, page 15)

4. On [redacted], a physician completed a DHS-54A Medical Needs form regarding the Appellant's husband. The physician listed diagnoses of status post motor vehicle accident, disc disease, ACL tear, meniscus tear (DJD)/ankle fracture/sprain. It was noted that the Appellant's spouse

ambulates with the help of a cane and needs surgery. The physician certified that the Appellant's spouse had a medical need for assistance with mobility, meal preparation, shopping, laundry, and housework. (Exhibit 1, page 17)

5. On [redacted], the ASW made a visit to the Appellant's mother's home to conduct a Home Help Services assessment. The Appellant reported her husband is disabled and received assistance from his brother. The Appellant also reported that her mother assists with care giving of her children. The Appellant was seated on the sofa and her mother would retrieve items for her if she needed something. The Appellant reported suffering from dizziness, requiring assistance in the shower, combing hair, toileting, dressing, laundry, cleaning, cooking, and shopping. The Appellant also reported weakness and pain in her back and hand pain preventing her from gripping, grasping, or holding items. (Exhibit 1, page 9)

6. Department policy states that HHS may not be authorized for services that a responsible relative, such as a spouse, is able and available to provide. (Adult Services Manual (ASM) 363, 9-1-2008; Adult Services Glossary)

7. The ASW determined that the Appellant must be capable of dressing, bathing, and taking her own medications, and eliminated these activities from the Appellant's HHS authorization. The ASW did not approve assistance with any additional Activities of Daily Living (ADLs) and determined that the Appellant's spouse could assist his wife in tasks as the medical form indicated he is able to perform all ADL tasks and only requires the use of a cane for mobility. The ASW determined that the Appellant's HHS case should be terminated as the new policy effective [redacted], does not allow for HHS eligibility if the only assistance needed is with Instrumental Activities of Daily Living (IADLs). (Exhibit 1, page 10 and ASW Testimony)

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

9. On [redacted], the Appellant's Request for Hearing was received contesting the termination of her HHS case. (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) 9-1-2008, addresses the comprehensive assessment and service plan development:

> **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 1-15 of 24

The Department of Human Services issued Interim Policy Bulletin ASB 2011-001 with an effective date of October 1, 2011. This Interim Policy limits HHS eligibility for Medicaid beneficiaries with a medical need for assistance with one or more ADLs at a ranking of 3 or higher. Interim Policy Bulletin ASB 2011-001 provides in pertinent part:

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.

The reason for termination of services should state the following:

> *New policy, effective October 1, 2011, by the Department of Community Health/Department of Human Services requires the need for hands-on services of at least one activity of daily living (ADL). The most recent assessment conducted at your last review did not identify a need for an ADL. Therefore, you are no longer eligible for home help services*.

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.
>
> *Reason:* Implementation of new policy pursuant to requirements under Public Act 63 of 2011.
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> **Online Manual Pages**
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> Online manual pages will be updated with the November 2011 policy release.
>
> INTERIM POLICY BULLETIN INDEPENDENT
> LIVING SERVICES (ILS) ELIGIBILITY CRITERIA
> ASB 2011-001 10-1-2011

The Appellant had been authorized for a total of 18 hours and 33 minutes per month for assistance with bathing, dressing, medication, and meal preparation with a total monthly care cost of [redacted]. The Appellant's mother was her HHS provider. (Exhibit 1, page 15) The Appellant has been diagnosed with depression/anxiety, vertigo-migraine headaches, disc disorder and Lupus.

The ASW had requested a DHS-54A Medical Needs form regarding the Appellant's husband, in accordance with the ASM policy requiring documentation that a spouse is disabled and unable to provide care. On [redacted], a physician completed a DHS-54A Medical Needs form regarding the Appellant's husband. The physician listed diagnoses of status post motor vehicle accident, disc disease, ACL tear, meniscus tear (DJD)/ankle fracture/sprain. It was noted that the Appellant's spouse ambulates with the help of a cane and needs surgery. The physician certified that the Appellant's spouse had a medical need for assistance with mobility, meal preparation, shopping, laundry, and housework. (Exhibit 1, page 17)

On [redacted], the ASW made a visit to the Appellant's mother's home to conduct a Home Help Services assessment. The Appellant reported her husband is disabled and received assistance from his brother. The Appellant also reported that her mother assists with care giving of her children. The Appellant was seated on the sofa and her mother would retrieve items for her if she needed something. The Appellant reported suffering from dizziness, requiring assistance in the shower, combing hair, toileting, dressing, laundry, cleaning, cooking, and shopping. The Appellant also reported weakness and pain in her back and hand pain preventing her from gripping, grasping, or holding items. (Exhibit 1, page 9)

The ASW's testimony and notes indicate that she assumed the Appellant is able to groom, dress, and bathe herself based on an understanding that the Appellant goes to her mother's home during the day and returns home at night. The ASW noted that the Appellant reported going to her mother's due to the convenience of it being located next to the children's school and the Appellant's mother also providing care for the Appellant's children. (ASW Testimony and Exhibit 1, pages 9-10) It does not appear that the ASW discussed the morning routine with the Appellant to see if her assumptions were correct. The Appellant testified that there must have been a misunderstanding, as she lives with her mother most of the time and does not go out everyday. The Appellant explained that when she does go back to her own home, her mother comes with her to assist her and to help care for the Appellant's children there. Otherwise, the Appellant's mother provides care for the Appellant and the Appellant's children at the Appellant's mother's home. (Appellant Testimony)

The ASW properly considered the availability and ability of the Appellant's husband to provide care for the Appellant. The Adult Services Glossary defines a responsible relative as a person's spouse or a parent of an unmarried child under age 18. Adult Services Glossary (ASG Glossary) 12-1-2007, Page 5 of 6. The Appellant's husband meets the definition of a responsible relative. Under Department policy, HHS for the Appellant could only be authorized for those services or times which the responsible relative is unavailable or unable to provide. The policy notes that 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 care giving. These disabilities must be documented/verified by a medical professional on the DHS-54A (Medical Needs form). *Adult Services Manual (ASM 363)* 9-1-2008, Page 5 of 24.

In this case, the DHS-54A Medical needs form does not support the ASW's determination that the Appellant's husband is able to assist the Appellant with activities. The DHS-54A Medical Needs form does not have a space for the medical professional to indicate whether an individual can assist their spouse with any of the specified personal care activities. While the doctor only certified that the Appellant's husband needed assistance with mobility, housework, shopping, laundry and medications, there was no place for the doctor to specifically indicate whether the Appellant's spouse can assist the Appellant with ADLs or IADLS. The Department policy indicates that the DHS-54A is needed to document a spouse's disabilities that would prevent care giving. In this case, the doctor documented disabilities in the diagnoses section of status post motor vehicle accident, disc disease, ACL tear, meniscus tear (DJD)/ankle fracture/sprain. The physician also noted that the Appellant's husband requires a cane to ambulate and is in need of surgery. (Exhibit 1, page 17) The information on this form does not support the ASW's determination that the Appellant's spouse is able to provide the assistance the Appellant needs with ADLs. For example, a person with disc disease, knee and ankle impairments who requires a cane to ambulate and is in need of surgery is unlikely to be able to assist a person with Lupus, vertigo, dizziness and disc disease with back pain in the shower. Similarly, a person who requires a cane to ambulate would not have two hands free to assist with carrying items such as a hot bowl of soup from the microwave to the table.

The evidence does not support the ASW's determinations that the Appellant does not need assistance with any ADLs or that her spouse is able to provide all the assistance the Appellant needs with tasks. The termination of the Appellant's HHS case can not be upheld. The Department shall complete a new assessment to determine the appropriate ongoing HHS authorization for the Appellant's case. Updated medical verification may be appropriate to clarify the Appellant's abilities and needs for assistance as well as her husband's abilities if there have been any changes in his condition, such as having the needed surgery.

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.

IT IS THEREFORE ORDERED THAT:

The Department's decision is REVERSED. The Department is ordered to reinstate the Appellant's HHS case to the previously authorized times retroactive to the [redacted], effective date and to complete a new assessment to determine the appropriate ongoing HHS authorization.

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

cc: [redacted]

Date Mailed: 1/6/2012

***** 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 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.