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. 2012-7270 HHS

[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 telephone hearing was held on [redacted], provider, appeared on the Appellant's behalf. [redacted], the Appellant, appeared and testified. [redacted] represented the Department. [redacted] appeared as a witness for the Department. The hearing record was left open for the Department to fax documentation the Appellant had with her at the hearing. This documentation was received on [redacted].

ISSUE

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

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 reported diagnoses of Rheumatoid arthritis, bipolar disorder, heart problems, balance problems, paranoia, kidney disease, Lupus, diabetes, emphysema, and edema. (Exhibit 1, page 18)

3. The Appellant has been receiving treatment for multiple impairments, including bipolar II disorder, anxiety, chronic kidney disease stage 2, fluid overload, hypertension, chronic pain syndrome (fibromyalgia), excessive daytime somnolence, restrictive lung disease, dyspnea, alveolar hypoventilations in sleep - secondary, nicotine dependence, elevated diaphragm, pre-diabetes, chronic bronchitis, cognitive impairment mild so stated, advanced atherosclerosis, chronic arthritis positive antinuclear

antibody, hypercholesterolemia, recurrent persistent severe lower back pain with radicular pain, lumbar radiculitis, lumbar degenerative disc disease, lumbar stenosis, lumbar spondylosis, cervical neck pain with radicular pain, and cervical degenerative disc disease. (Exhibit 3)

4. The Appellant has been receiving HHS for assistance with laundry, shopping, meal preparation, dressing, and housework. (Exhibit 1, page 15)

5. On [redacted], the Department sent the Appellant an Advance Action Notice which informed her that effective [redacted], her HHS case could be suspended and provider logs were due. (Exhibit 1, page 7)

6. On [redacted], an ASW went to the Appellant's home and completed an in home assessment with the Appellant and her provider. (Exhibit 1, page 13)

7. Based on the information available at the time of the assessment, the ASW concluded that the Appellant did not qualify for chore provider services. The ASW determined that Appellant only needed some hands on assistance with one activity, laundry. (Exhibit 1, pages 13 and 16)

8. 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 Activity of Daily Living ("ADL"). (Exhibit 1, pages 8-11)

9. On or about [redacted] the Appellant and her provider faxed the provider log to the Department indicating assistance was provided with bathing, grooming, and medication in addition to the authorized activities of dressing, meal preparation, shopping, laundry, and light housework. (Exhibit 1, page 6)

10. Without issuing any notice of a reduction, the Appellant's HHS hours were reduced to reflect the ASW's authorization for laundry assistance only effective [redacted]. (Exhibit 1, pages 14 and 16)

11. The Appellant needs and has been receiving some hands on assistance with bathing, grooming and dressing. (Appellant and Provider Testimony)

12. On [redacted], the Michigan Administrative Hearing System received the Appellant's Request for Hearing. (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 2-5 of 24 addresses the issues of 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-54A.

- 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 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.
>
> **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 [redacted] per month for assistance with dressing, housework, laundry, shopping and meal preparation with a total monthly care cost of [redacted] (Exhibit 1, page 15)

On [redacted], an ASW completed a home visit to assess the Appellant's HHS case. That ASW was not available for the [redacted], hearing proceedings. It appears that this ASW determined the Appellant only needed hands on assistance with laundry. (Exhibit 1, pages 13 and 16-17)

The Appellant and her chore provider credibly testified that the Appellant requires and has been receiving some physical assistance with ADLs. Specifically, bathing, grooming, and dressing. They explained that the Appellant is not able to do things without taking [redacted] which her doctor has directed her not to take because of her kidney issues. (Appellant Testimony) The Appellant's multiple medical impairments are documented in the additional evidence received after the [redacted] hearing proceedings. (Exhibit 3) The provider's testimony that they have been trying to inform the ASW that assistance is needed with additional ADLs is supported by the copy of the provider log sent to the Department on or about [redacted], on which the Appellant and her provider indicated assistance was provided with bathing, grooming, and medication in addition to the authorized activities of dressing, meal preparation, shopping, laundry, and light housework. (Exhibit 1, page 6)

Accordingly, the proposed termination of the Appellant's HHS case because she did not require hands on assistance with at least one ADL can not be upheld. The Appellant

should be ranked at least as a level 3 for the ADLs of bathing, grooming, and dressing. The Appellant's HHS case should be reinstated and a new assessment is needed to determine the appropriate ongoing HHS authorization.

The hearing packet indicates the prior ASW implemented a reduction to the Appellant's HHS case without any notice, and retroactively. It appears the ASW implemented her determination that the Appellant should only be authorized for HHS hours with laundry effective [redacted]. (Exhibit 1, pages 14 and 16)

Adult Services Manual policy addresses when the Advance Negative Action Notice form is to be issued:

> **Advance Negative Action Notice (DHS-1212)**
>
> If independent living services are denied or withdrawn, or if payment is suspended or reduced, the adult services worker must notify the client of the negative action.
>
> The Advance Negative Action Notice (DHS-1212) is used and automatically generated on ASCAP when the following reasons are selected:
>
> • Reduced - decrease in payment.
> • Suspended - payments stopped but case remains open.
> • Terminated - case closure.
>
> *Adult Services Manual (ASM) 362, 12-1-2007,*
> Pages 3 of 5

Further, the Code of Federal Regulations, Chapter 42 addresses the Appellant's rights with respect to Advance Negative Notice of an agency action:

> **§ 431.211 Advance notice.**
>
> The State or local agency must mail a notice at least 10 days before the date of action, except as permitted under §§ 431.213 and 431.214 of this subpart.
>
> **§ 431.213 Exceptions from advance notice.**
>
> The agency may mail a notice not later than the date of action if—
>
> > (a) The agency has factual information confirming the death of a recipient;
> > (b) The agency receives a clear written statement signed by a recipient that—

(1) He no longer wishes services; or
(2) Gives information that requires termination or reduction of services and indicates that he understands that this must be the result of supplying that information;

(c) The recipient has been admitted to an institution where he is ineligible under the plan for further services;
(d) The recipient's whereabouts are unknown and the post office returns agency mail directed to him indicating no forwarding address (See § 431.231 (d) of this subpart for procedure if the recipient's whereabouts become known);
(e) The agency establishes the fact that the recipient has been accepted for Medicaid services by another local jurisdiction, State, territory, or commonwealth;
(f) A change in the level of medical care is prescribed by the recipient's physician;
(g) The notice involves an adverse determination made with regard to the preadmission screening requirements of section 1919(e)(7) of the Act; or
(h) The date of action will occur in less than 10 days, in accordance with § 483.12(a)(5)(ii), which provides exceptions to the 30 days notice requirements of § 483.12(a)(5)(i)

§ 431.214 Notice in cases of probable fraud.

The agency may shorten the period of advance notice to 5 days before the date of action if—
(a) The agency has facts indicating that action should be taken because of probable fraud by the recipient; and
(b) The facts have been verified, if possible, through secondary sources.

None of the exceptions to the advance notice requirement were present in this case. Therefore, the Department erred by implementing a reduction without issuing any notice and making the reduction retroactive.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED THAT:

The Department's decision is REVERSED. The Appellant's HHS case shall be reinstated at the previously authorized [redacted] per month with a total care cost of [redacted] effective [redacted]. A new assessment is needed to determine the appropriate ongoing HHS authorization for the Appellant. Additional HHS hours for bathing, grooming and medication, if authorized, can also be made retroactive.

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

cc: [redacted]

Date Mailed: 3-1-2012

***** 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.