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) 373-4147

IN THE MATTER OF:

[redacted],

Docket No. 2013-15297 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]. The Appellant appeared without his advocate. He had no witnesses. [redacted] represented the Department. Her witness was [redacted], ASW. She had no other witnesses.

PRELIMINARY MATTER

The admission of Appellant's (proposed) Ex. #2 – pages of medical records brought by the Appellant to hearing was never received by the ALJ per instructions on the record.

On review of the file it was also discovered that the Appellant's advocate was not served notice of hearing - although he intervened by letter in [redacted].

It was also discovered on review that the Appellant, although apparently high functioning, suffers from long term schizophrenia, an affliction not captured or addressed by the Department during the comprehensive assessment or during the fair hearing or on receipt of DHS 54A Medical Needs form. *See* Department's Exhibit A, at page 22.

ISSUE

Did the Department properly deny the Appellant's Home Help Services (HHS) for lack of demonstrating a need for hands on assistance with an Activity of Daily Living (ADL) at a ranking of "3" or greater?

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 disabled [redacted]-year old Medicaid-SSI beneficiary. (Appellant's Exhibit #1)

2. The Appellant is afflicted with ASHD, OA, DM, venous ulcers, DVT, HTN, sick sinus syndrome, schizophrenia, frequent synopal episodes and chronic pain. *See* Department's Exhibit A, pp. 18-22 and Appellant's Exhibit #1 – throughout.

3. The Department witness testified that she did not identify any need for an ADL with a ranking of three "3" or greater during the in-home face to face comprehensive assessment. *See* Testimony of Rouse.

4. The Department's witness (ASW [redacted]) testified that the Appellant – although in pain – was ambulatory. (Department's Exhibit A, page 17)

5. The Appellant testified that he needs help and that he doesn't know what an ADL is and that he did not have time to discuss his many medical afflictions during the in home face to face assessment. The Appellant said in an apparent reference to the ASW "[H]er whole object was for me not to understand." (*See* Testimony of Appellant)

6. The Appellant receives some service from the Community Mental Health. (*See* Appellant's Exhibit #1)

7. The Appellant said there was no comprehensive discussion or understanding by him of the new ADL policy during the in-home assessment. (*See* Testimony of the Appellant)

8. The Appellant was advised of the denial of HHS by DHS 1212-A Adequate Negative Action notice on [redacted], to be effective [redacted]. (Department's Exhibit A, p. 14)

9. The Appellant testified that he has sustained a significant change in condition since the [redacted] in home assessment. (*See* Testimony of the Appellant)

10. The request for hearing on the instant appeal was received by the Michigan Administrative Hearing System on [redacted].

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 by a medical professional.

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 5, 5-1-2012.

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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.
>
> ***
>
> **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
>
> ***

The Department witness testified that she denied the Appellant's request for HHS benefits because the Appellant did not demonstrate a need for an ADL, but that he instead focused on explaining his need for IADLs. At hearing the Appellant said he did not understand the ASW during the face to face assessment.

Derivative to the HHS application is the issue of the Appellant's comprehension. Absent a frank explanation of his mental status – missing from the Department's evidence[1] – the ALJ suspects there was, in fact, no meaningful understanding of events as they unfolded on [redacted] during the face-to-face evaluation. The Department did not persuade the ALJ that their review was – comprehensive. Accordingly, the Department's assessment fails for the fundamental lack of a comprehensive assessment.

[1] There was no historical reference to the Appellant's mental illness in any of the Department's medical evidence, notes, or certifications brought for hearing.

The issue of non-service to the Appellant's advocate was likely unintentional – as his appearance was contained within a document that also explained the Appellant's methadone treatment and later his schizophrenia[2] – thus a clue about the Appellant's mental capacity to self represent at fair hearing or during an HHS assessment. I suspect he needs a representative for these issues – even though it was not obvious at hearing.

Completion of the comprehensive assessment is the threshold event from which all evaluations are based. A decision to deny HHS benefits for lack of demonstrating a need for an ADL with a ranking of 3 or greater cannot be reached without it.

As an impartial reviewer the ALJ is required to review the evidence in a neutral fashion. The Appellant likely focused on the more exigent IADLs owing to his limited mental capacity – obviously frustrating his ability to marshal the necessary assets for fair hearing or further assessment based on a significant change in condition.

The Department is reminded that the ASW role, under policy, is that of honest broker and to act as an advocate by informing the client on how to make the best possible use of available resources. *See* ASM 100 and 102.[3]

In order to have meaningful participation in the fair hearing process the Appellant has to understand what he is up against. It is black letter law that the hearing officer must tailor the hearing to the capacity of those to be heard.[4] This is not possible when the ASW has not shared key information during the comprehensive assessment or the preparation for fair hearing.

- Full disclosure is fundamental to the fair hearing process particularly for the public benefit recipient.

I find that the Appellant was denied meaningful and knowing participation at both the in-home assessment and then the fair hearing as conducted on [redacted] for lack of his understanding of basic elements addressed during the face to face review conducted under the Department's new HHS policy.

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[2] This might have been mistaken by intake staff as a medical record. *See* Department's Ex. A, page 4.

[3] The mission statement is broadly worded: …[T]o accomplish this vision, DHS will:
● Act as resource brokers for clients.
● Advocate for equal access to available resources.
● Develop and maintain fully functioning partnerships that educate and effectively allocate limited resources on be half of our clients. (ASM 100 page 1 of 2) … As advocate, the specialist will:
●● Assist the client to become a self-advocate.
●● Assist the client in securing necessary resources.
●● Inform the client of options and educate him/her on how to make best possible use of available resources…
(ASM 102)

[4] *Goldberg v. Kelly*, 397 US 254, 269 (1970)

Some consumers of public benefits simply require greater effort to fully inform. If the Department is fearful that the Appellant will mislead or waste time - they will have to conduct a more searching review.

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 new policy an HHS recipient must utilize at least one (1) ADL requiring hands-on service at the three (3) ranking or higher in order to be eligible for HHS.

- This was never explained to the point of comprehension by the Appellant.

On review, based on the testimony of the ASW, I find that she failed to comprehensively assess the Appellant and his need for ADLs on in-home assessment. Furthermore, the non-receipt of the Appellant's proposed exhibit – although provisionally admitted - is troubling as was the non-service of the Appellant's representative.

Nevertheless, the Appellant has preponderated his burden of proof to establish that the Department erred in its assessment – the comprehensive assessment was incomplete.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED that:

The Department's decision is REVERSED.

Dale Malewska
Administrative Law Judge
For James K. Haveman, Director
Michigan Department of Community Health

[redacted]

cc: [redacted]

Date Mailed: 5/3/2013

***** 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.