STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH
P.O. Box 30763, Lansing, MI 48909
(517) 335-2484; Fax: (517) 373-4147

IN THE MATTER OF:

[redacted]

Docket No. 2013-15969 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.*, and upon the Appellant's request for a hearing.

After due notice, a hearing was held on [redacted]. Appellant appeared and testified on her own behalf. [redacted], Nephrology Social Worker and [redacted], Provider, appeared as witnesses for Appellant. [redacted], Appeals Review Officer, represented the Department of Community Health (DCH of Department). [redacted], Adult Services Supervisor, and [redacted], Adult Services Worker (ASW), appeared as witnesses for the Department.

ISSUE

Did the Department properly deny Appellant Home Help Services (HHS) because she was unable to complete a home visit to do an initial assessment 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. Appellant is a [redacted] year-old Medicaid beneficiary who has been diagnosed with ESRD and cancer. (Exhibit 1; Testimony).

2. On [redacted], Appellant completed an application for HHS. (Exhibit A, p 12).

3. On [redacted], Appellant's case was transferred to ASW [redacted] who scheduled an in-home assessment for [redacted]. On [redacted], Appellant's provider telephoned ASW [redacted] to inform her that the [redacted] appointment would need to be cancelled because Appellant was going into the hospital. (Exhibit A, p 12; Testimony).

4. Appellant's in-home assessment was rescheduled for [redacted], but that appointment too had to be cancelled because Appellant's [redacted] was killed in a hit and run accident on [redacted] (Testimony).

5. ASW [redacted] then scheduled an in-home assessment for [redacted]. ASW [redacted] testified that she went to Appellant's home on [redacted], but no one answered the door. (Testimony).

6. On [redacted], ASW [redacted] sent Appellant an Adequate Negative Action Notice indicating that Appellant was not approved for HHS because "several" home visits were cancelled and Appellant was not home for one visit. (Exhibit A, p 5).

7. Since the Adequate Negative Action Notice was sent out, ASW [redacted] has assessed Appellant and found her eligible for HHS. ASW [redacted] indicated that Appellant will be eligible for HHS effective [redacted]. (Testimony).

8. On [redacted], the Michigan Administrative Hearing System received a Request for Hearing from Appellant. (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 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 101 (11-1-2011) (hereinafter "ASM 101") addressed the issue of payment services for Home Help at the time of the denial in this case:

> **Payment Services for Home Help**
>
> Home Help Services are non-specialized personal care service activities provided under the independent living services program to persons who meet eligibility requirements.

Home Help Services are provided to enable individuals with functional limitation(s), resulting from a medical or physical disability or cognitive impairment to live independently and receive care in the least restrictive, preferred settings.

Home Help Services are defined as those tasks which the department is paying for through Title XIX (Medicaid) funds. These services are furnished to individuals who are not currently residing in a hospital, nursing facility, licensed foster care home/home for the aged, intermediate care facility (ICF) for persons with developmental disabilities or institution for mental illness.

These activities must be certified by a Medicaid enrolled medical professional and may be provided by individuals or by private or public agencies. The medical professional does not prescribe or authorize personal care services. Needed services are determined by the comprehensive assessment conducted by the adult services specialist.

Personal care services which are eligible for Title XIX funding are limited to:

Activities of Daily Living (ADL)

- Eating.
- Toileting.
- Bathing.
- Grooming.
- Dressing.
- Transferring.
- Mobility.

Instrumental Activities of Daily Living (IADL)

- Taking medication.
- Meal preparation/cleanup.
- Shopping for food and other necessities of daily living.
- Laundry.
- Light Housecleaning.

An individual must be assessed with at least one Activity of daily Living (ADL) in order to be eligible to receive home help services.

Note: If the assessment determines a need for an ADL at a level 3 or greater but these services are not paid for by the

department, the individual would be eligible to receive IADL services.

Example: Ms. Smith is assessed at a level 4 for bathing however she refuses to receive assistance. Ms. Smith would be eligible to receive assistance with IADL's if the assessment determines a need at a level 3 or greater. [ASM 101, pages 1-2 of 4.]

Regarding the assessment discussed above, Adult Services Manual 120 (11-1-2011) (hereinafter "ASM 120") provided:

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.

HHS payments may only be authorized for needs assessed at the 3 level or greater.

An individual must be assessed with at least one activity of daily living in order to be eligible to receive home help services.

Note: If the assessment determines a need for an ADL at a level 3 or greater but these services are not paid for by the department, the individual would be eligible to receive IADL services.

Example: [redacted] is assessed at a level 4 for bathing however she refuses to receive assistance. [redacted] would be eligible to receive assistance with IADL's if the assessment determines a need at a level 3 or greater.

See ASM 121, Functional Assessment Definitions and Ranks for a description of the rankings for activities of daily living and instrumental activities of daily living.

* * *

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. [ASM 120, pages 2-4 of 6.]

Moreover, with respect to the authorization of payments, Adult Services Manual 140 (11-1-2011) (hereinafter "ASM 140") states:

> **ADULT SERVICES AUTHORIZED PAYMENTS (ASAP)**
>
> The Adult Services Authorized Payments (ASAP) is the Michigan Department of Community Health payment system that processes adult services authorizations. The adult services specialist enters the payment authorizations using the **Payments** module of the **ASCAP** system.
>
> *No payment can be made unless the provider has been enrolled in Bridges*. Adult foster care, homes for the aged and home help agency providers must also be registered with Vendor Registration; see ASM 136, Agency Providers.
>
> **Note:** The adult services home page provides a link to the provider enrollment instructions located on the Office of Training and Staff Development web site.
>
> Home help services payments to providers must be:
>
> - *Authorized for a specific period of time and payment amount.* The task is determined by the comprehensive assessment in ASCAP and will automatically include tasks that are a level three or higher.
>
> - Authorized **only** to the person or agency actually providing the hands-on services.
>
> **Note:** An entity acting in the capacity of the client's fiscal intermediary is not considered the provider of home help and must not be enrolled as a home help provider; see ASM 135, Home Help Providers.
>
> - Made payable jointly to the client and the provider.
>
> **Exception:** Authorizations to home help agency providers are payable to the provider only. There are circumstances where payment authorizations to the provider only are appropriate, for example, client is physically or mentally unable to endorse the warrant. All single party authorizations must be approved by the supervisor.

- Prorate the authorization if the MA eligibility period is less than the full month. [ASM 140, page 1 of 3 (italics added).]

The Department's ASW testified that Appellant cancelled two appointments to conduct the initial HHS assessment and was not home for the [redacted] scheduled assessment. The Department's ASW indicated that she closed Appellant's case at that point and told Appellant, via the Adequate Negative Action Notice, that she would need to reapply for HHS. The Department's ASW testified that Appellant has since been approved for HHS and that her provider has also been approved. According to the Department's ASW, Appellant will be eligible for HHS back to [redacted], depending on the outcome of this appeal. The Department's ASW testified that she cannot open an HHS case prior to doing an assessment and that she conducted an HHS assessment in this case as soon as it was possible.

Appellant's provider testified that Appellant went into the [redacted] on [redacted] and that he contacted the ASW prior to that time to cancel the scheduled assessment. Appellant's provider testified that the ASW never inquired as to when Appellant would be out of the [redacted] so he had to call her back to schedule the next assessment. Appellant's provider testified that Appellant's [redacted] was then killed in a tragic accident and that he again informed the ASW prior to the scheduled assessment that Appellant would not be available. Appellant's provider testified that on [redacted], he awoke at [redacted] a.m., that he and Appellant were home all day, and that the ASW never arrived.

Appellant's Nephrology Social Worker submitted a letter outlining the many medical difficulties Appellant was having during the time of the HHS assessments. (Exhibit A, p 4). Appellant's Nephrology Social Worker indicated that Appellant was diagnosed with End Stage Renal Disease (ESRD) on [redacted] and has been requiring Hemodialysis three times per week since then. Appellant's Nephrology Social Worker also indicated that Appellant was diagnosed with [redacted] in [redacted], which also required treatments three times per week. Appellant's Nephrology Social Worker indicated that Appellant was literally going to medical appointments every day and it would have been very difficult for her to meet with the Department's ASW during that period.

Here, while it is clear that the ASW certainly could have tried harder to meet with Appellant before closing her case, the undersigned cannot award payments for HHS services provided prior to approval. It is noted that the ASW indicated in the Adequate Negative Action Notice that Appellant cancelled "several" appointments for assessments when, in fact, Appellant only cancelled two assessments and had very good reasons for doing so. Regarding the scheduled appointment on [redacted], the undersigned is unable to determine whether the ASW made a home visit on that date.

However, with all of that said, HHS payments to providers must be authorized for a specific type of service, a specific period of time and a specific payment amount (ASM 140, page 1 of 3), Here, no such specific authorization was made for the disputed time period. Similarly, with respect to the disputed time period, there was no functional assessment conducted in order to determine the client's ability to perform the identified activities (ASM 120, pages 2-4 of 6), no service plan developed to address the specific services to be provided, by whom and at what cost (ASM 130, pages 1-2 of 2), and no provider was enrolled (ASM 140, page 1 of 3). All of those things have to happen before HHS payments can be made.

This Administrative Law Judge does not possess equitable powers and, therefore, cannot award benefits or payments as a matter of fairness. Certain criteria have to be met and specific events have to occur before HHS payments can be authorized. The assessment process was not completed and the provider was not enrolled in this case until [redacted]. Consequently, any services provided before that time were unauthorized and the Department cannot pay for them.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly denied payments for Home Help Services prior to [redacted].

The Department shall immediately begin paying for HHS for Appellant effective [redacted] per their subsequent assessment.

IT IS THEREFORE ORDERED THAT:

The Department's decision is **AFFIRMED**.

/s/

Robert J. Meade
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

cc: [redacted]

Date Mailed: February 7, 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.