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],

Appellant

Docket No. 2013-19969 HHS
Case No. [redacted]

_____/

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 Thursday [redacted]. [redacted] appeared on behalf of the Appellant. She had no witnesses. [redacted], [redacted]., represented the Department. Her witness was [redacted], ASW.

ISSUE

Did the Department properly deny the Appellant's request for Home Help Services (HHS)?

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 HTN, neuropathy, DM II, closed head injury, mental disorder and newly diagnosed "early dementia/Alzheimer's." (*See* Testimony, Department's Exhibit A, page 7 and Appellant's Exhibit #2)

3. The Appellant's representative said that the Appellant is forgetful and weak with physican imposed lifting restrictions. She added that his gait is "wobbly," and that he fell in the bath on [redacted]. (*See* Testimony and Appellant's Exhibit #1)

4. The Department's witness testified that she observed the Appellant on in-home assessment [redacted] and that he did not appear to need hands on assistance with any ADL. She reported that the Appellant met her in the driveway of his residence and observed him walk into the residence under his own power

and without any assistive device. (*See* Testimony and Department's Exhibit A, pp. 9 and 14)

5. The Department witness, ASW [redacted], sent the Appellant a DHS 1212-A Adequate Negative Action Notice on [redacted], denying services effective [redacted]. (Department's Exhibit A, pages 2, 9)

6. The Appellant's further appeal rights were contained in the Adequate Negative Action Notice.

7. 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 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.

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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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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, Miller, testified that on in-home assessment she observed the Appellant had no need for ADL assistance. She explained policy developments and advised the Appellant and his choreprovider that he would be denied services from the Home Help Service program for lack of need with hands-on assistance at a ranking of "3" or greater.

At hearing the Appellant's representative explained that the Appellant required assistance because "he had many doctor appointments, is forgetful and incompetent. She added that he

cannot put one foot in front of the other - owing to neuropathy – such that he loses strength in his feet and hands…" on minimal exertion. The Appellant's representative concluded her testimony stating that she fears his condition is worsening.

On review, the Appellant's representative referenced a post-assessment incident where the Appellant fell while bathing. If the Appellant's condition is indeed worsening - then the Appellant would be advised to seek reassessment for investigation of a possible significant change in condition.

The ASW testified credibly, however, that as of the date of the in-home visit and comprehensive assessment the Appellant did not require assistance with any ADL or personal care issue.

It is the province of the ASW to determine eligibility for services; the ASM requires an in-home, comprehensive assessment of HHS applicants. 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.

The Appellant failed to preponderate his burden of proof that the Department erred in denying his request for HHS, because at the time of the assessment he demonstrated no physical need for assistance. The testimony established that the Appellant was able to tend to his own personal care. In the testimony it is suggested that his ability has eroded since the in-home assessment, although the Appellant had not reported a change in condition until today's hearing.

The uncontested testimony regarding cognitive dysfunction in the Appellant is noteworthy. However, the ALJ has no authority to impose a mental health [CMH] remedy or to alter HHS policy. He further observes that the DHS *Interim Policy* adopted in October of 2011 makes no exception for the provision of HHS - absent satisfaction of the ADL requirement.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

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

Case Name: [redacted]
Docket No. 2013-19969 HHS
Hearing Decision & Order

cc: [redacted]

Date Mailed: _____

***** 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.