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

[redacted].

Docket No. 2013-2971 HHS[1]
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]. [redacted], a care provider, appeared and testified on Appellant's behalf. Appellant also testified on his own behalf. [redacted], Appeals Review Officer, represented the Department of Community Health. (Department of Respondent). [redacted], Adult Services Worker (ASW) appeared as a witness for the Department.

ISSUE

Did the Department properly terminate Home Help Services (HHS) the Appellant?

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 degenerative joint disease of the spine, back pain, and hypertension. Appellant also has vision problems and uses a wheelchair to get around. (Exhibit A, pp 9-10).

2. On [redacted], ASW [redacted] left a voice mail message for Appellant informing him that she would be making a home call on [redacted] to conduct Appellant's 6-month and annual review for the HHS program. (Exhibit A, p 11). Appellant did not answer his door for the [redacted] home visit or at a subsequently scheduled visit on [redacted]. Appellant also refused to schedule visits for [redacted] or [redacted]. (Exhibit A, p 12-14).

[1]While this case was originally coded as a provider/HHP case, it became clear during the hearing that the HHS recipient, rather than her provider, was the Appellant and that this case should be coded HHS.

3. On [redacted], the Department sent Appellant a Negative Action Notice informing him that his case would be closed if the review was not completed. When Appellant did not respond, his case was closed. (Exhibit A, p 14).

4. 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.

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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.

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).]

With respect to Reviews, Adult Services Manual 155 (11-1-2011) (hereinafter "ASM 155") states:

> **REVIEWS**
>
> ILS cases must be reviewed every six months. A face-to-face contact is required with the client, in the home. If applicable, the interview must also include the caregiver.

Six Month Review

Requirements

Requirements for the review contact must include:

- A review of the current comprehensive assessment and service plan.
- A reevaluation of the client's Medicaid eligibility, if home help services are being paid.
- Follow-up collateral contacts with significant others to assess their role in the case plan.
- Review of client satisfaction with the delivery of planned services.

Documentation

Case documentation for all reviews should include:

- Update the "**Disposition**" module in ASCAP.
- Generate the CIMS Services Transaction (DHS-5S) from **forms** in **ASCAP**.
- Review of **all** ASCAP modules **and** update information as needed.
- Enter a brief statement of the nature of the contact and who was present in **Contact Details** module of ASCAP.
- Record expanded details of the contact in **General Narrative**, by clicking on **Add to & Go To Narrative** button in **Contacts** module.
- Record summary of progress in service plan by clicking on **Insert New Progress Statement in General Narrative** button, found in any of the **Service Plan** tabs.

Annual Redetermination

Procedures and case documentation for the annual review are the same as the six month review, with the following additions:

- A reevaluation of the client's Medicaid eligibility, if home help services are being paid.

- A new medical needs (DHS-54A) certification, if home help services are being paid.

  Note: The medical needs form for SSI recipients will **only** be required at the initial opening and is no longer required in the redetermination process. All other Medicaid recipients will need to have a DHS-54A completed at the initial opening and then annually thereafter.

- A face-to-face meeting with the care provider, if applicable. This meeting may take place in the office, if appropriate.

Here, on [redacted], ASW [redacted] left a voice mail message for Appellant informing him that she would be making a home call on [redacted] to conduct Appellant's 6-month and annual review for the HHS program. (Testimony; Exhibit A, p 11). When ASW [redacted] appeared at Appellant's apartment on [redacted], she discovered that the building was secure and she would need to be buzzed in. ASW [redacted] pressed the buzzer for Appellant's apartment ([redacted] [redacted]) and could hear the buzzer ringing inside because Appellant's window was open. However, Appellant did not answer the door and, because it was a secure building, there was no place for ASW [redacted] to leave a card. (Testimony, Exhibit A, p 11).

On [redacted], ASW [redacted] sent Appellant a notice indicating that she would try again to conduct a home visit on [redacted]. When ASW [redacted] arrived at Appellant's apartment on [redacted], she rang the buzzer to Appellant's apartment and could again hear it buzzing in Appellant's apartment through his open window. ASW [redacted] also heard Appellant saying repeatedly, in an excited voice, "See the worker is here, what do I?" ASW [redacted] then called Appellant on the telephone. A [redacted] answered and indicated that Appellant was not available. ASW [redacted] informed the [redacted] who she believed to be Appellant's live-in home help provider, that she was outside and was there to conduct a scheduled home review. The [redacted] again informed ASW [redacted] that Appellant was not available. (Testimony, Exhibit A, p 13).

On [redacted], ASW [redacted] sent Appellant a Negative Action Notice indicating that his case would be closed if he did not allow a home visit. Appellant left voice mail messages for ASW [redacted] on [redacted] and [redacted]. ASW [redacted] returned

Appellant's call on [redacted], but Appellant did not answer. ASW [redacted] left Appellant a message indicating that she would return to attempt a home visit on [redacted]. Appellant called back and left ASW [redacted] a voice mail message indicating that he would not be available [redacted] or [redacted] because he had a doctor's appointment. (Testimony, Exhibit A, p 13).

On [redacted], ASW [redacted] held a case conference regarding Appellant with her supervisor. The supervisor called Appellant and spoke to him on the phone. The supervisor offered to schedule the home visit at any time on either [redacted] or [redacted], to accommodate Appellant's doctor's appointment. Appellant refused and ended up hanging up on the supervisor. (Testimony; Exhibit A, p 14).

Appellant testified that he was not at the home on [redacted] when ASW [redacted] indicated that she could hear his voice through the window. Appellant indicated that he could not meet with ASW Dyson on [redacted] or [redacted] because he had doctor's appointments that were going to last all day on both days.

Appellant's home help provider testified that Appellant gets upset every time he has interaction with ASW [redacted] and that she volunteered to meet with ASW [redacted] so that Appellant would not become so upset. Appellant's provider also testified that ASW [redacted] actually showed up the day before she said she was going to during one of her visits.

Based on the evidence presented, the Department properly closed Appellant's case for his refusal to participate in mandated in-home reviews. Appellant was given ample opportunity to participate in an in-home review and he refused to do so. Appellant can always reapply for home help services.

DECISION AND ORDER

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

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

[redacted]
Docket No. 2013-2971 HHS
Decision and Order

cc: [redacted]

Date Mailed: January 28, 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.