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. 2013-34800 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 hearing was held on [redacted] [redacted] Assessment Coordinator, [redacted] represented the Appellant. [redacted] the Appellant, appeared and testified. [redacted], friend, appeared as a witness for the Appellant. [redacted], Appeals Review Officer, represented the Department. [redacted], Adult Services Worker ("ASW"), [redacted] ASW, and [redacted] Adult Services Supervisor, appeared as witnesses for the Department.

ISSUE

Did the Department properly deny the Appellant's Home Help Services ("HHS") application?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. On or about [redacted], the Department received a referral for the Appellant for the HHS program. (Exhibit 1, page 7)

2. The Appellant has multiple diagnoses, including: poorly controlled diabetes mellitus, atrial fibrillation, and coronary artery disease. The Appellant also reported diagnoses of high blood pressure, COPD, and arthritis in knees to the ASW. (Exhibit 1, pages 8 and 11)

3. On [redacted], the ASW went to the Appellant's home to complete an initial evaluation. The Appellant, her friend, and a representative from the home care agency were present. The ASW understood that the Appellant was independent with the Activities of Daily Living ("ADLs") included in the HHS program. The ASW also called the Appellant's doctors office to clarify the DHS-54A Medical Needs form. It was reported that in section I of the

form, the doctor only checked the "yes" box and did not check the actual activities. (Exhibit 1, pages 10-11; ASW Testimony)

4. Based on the information available at the time of the assessment, the ASW concluded that the Appellant did not have a medical need for hands on assistance with any ADL. (Exhibit 1, page 9; ASW Testimony)

5. On [redacted], the Department sent the Appellant an Adequate Action Notice which informed her that the HHS application was denied based on the new policy requiring a need for hands on assistance with at least one ADL. (Exhibit 1, pages 5-6)

6. On [redacted], the Appellant's hearing request was received by the Michigan Administrative Hearing System. (Exhibit 1, pages 4-6)

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) 105, 11-1-11, addresses HHS eligibility requirements:

> **Requirements**
>
> Home help eligibility requirements include all of the following:
>
> - Medicaid eligibility.
> - Certification of medical need.
> - Need for service, based on a complete comprehensive assessment (DHS-324) indicating a functional limitation of level 3 or greater for activities of daily living (ADL).
> - Appropriate Level of Care (LOC) status.
>
> ***
>
> **Medical Need Certification**
>
> Medical needs are certified utilizing the DHS-54A, Medical Needs form and must be completed by a Medicaid enrolled

medical professional. Completed DHS-54A or veterans administration medical forms are acceptable for individual treated by a VA physician; see ASM 115, Adult Services Requirements.

Necessity For Service

The adult services specialist is responsible for determining the necessity and level of need for home help services based on:

- Client choice.
- A completed DHS-324, Adult Services Comprehensive Assessment. 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.

- Verification of the client's medical need by a Medicaid enrolled medical professional via the DHS-54A. The client is responsible for obtaining the medical certification of need; see ASM 115, Adult Services Requirements.

Adult Services Manual (ASM) 105,
11-1-2011, Pages 2-3 of 3

Adult Services Manual (ASM) 115, 11-1-11, addresses the DHS-54A Medical Needs form:

MEDICAL NEEDS FORM (DHS-54A)

The DHS-54A, Medical Needs form must be signed and dated by a medical professional certifying a medical need for personal care services.The medical professional must be an enrolled Medicaid provider and hold one of the following professional licenses:

- Physician (M.D. or D.O.).
- Nurse practitioner.
- Occupational therapist.

- Physical therapist.

Note: A physician assistant (PA) is not an enrolled Medicaid provider and **cannot** sign the DHS-54A.

The medical needs form is only required at the initial opening for SSI recipients and disabled adult children (DAC). All other Medicaid recipients must have a DHS-54A completed at the initial opening and annually thereafter.

The client is responsible for obtaining the medical certification of need but the medical professional and not the client must complete the form. The National Provider Identifier (NPI) number must be entered on the form by the medical provider and the medical professional must indicate whether they are a Medicaid enrolled provider.

The medical professional certifies that the client's need for service is related to an existing medical condition. **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.

Adult Services Manual (ASM) 115,
11-1-2011, Pages 1-3 of 3

Adult Services Manual (ASM) 120, 5-1-12, addresses the comprehensive assessment:

INTRODUCTION

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

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.
    - Use the DHS-27, Authorization to Release Information, when requesting client information from another agency.
    - Use the DHS-1555, Authorization to Release Protected Health Information, if requesting additional medical documentation; see RFF 1555. The form is primarily used for APS cases.
- Follow rules of confidentiality when home help cases have companion APS cases, see SRM 131 Confidentiality.

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Functional Assessment

The **Functional Assessment** module of the **ASCAP** comprehensive assessment is the basis for service planning and for the home help services 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

ADLs and IADLs 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.

Home help payments may only be authorized for needs assessed at the 3 level ranking 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: 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 determined 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.

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Time and Task

The specialist 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.

An assessment of need, at a ranking of 3 or higher, does not automatically guarantee the maximum allotted time allowed by the reasonable time schedule (RTS). **The specialist must assess each task according to the actual time required for its completion.**

Example: A client needs assistance with cutting up food. The specialist would only pay for the time required to cut the food and not the full amount of time allotted under the RTS for eating.

IADL Maximum Allowable Hours

There are monthly maximum hour limits on all instrumental activities of daily living except medication. The limits are as follows:

- Five hours/month for shopping
- Six hours/month for light housework
- Seven hours/month for laundry
- 25 hours/month for meal preparation

Proration of IADLs

If the client does not require the maximum allowable hours for IADLs, authorize only the amount of time needed for each task. Assessed hours for IADLs (except medications) must be prorated by **one half** in shared living arrangements where other adults reside in the home, as home help services are **only** for the benefit of the client.

Note: This does not include situations where others live in adjoined apartments/flats or in a separate home on shared property and there is no shared, common living area.

In shared living arrangements, where it can be **clearly** documented that IADLs for the eligible client are completed separately from others in the home, hours for IADLs do not need to be prorated.

Example: Client has special dietary needs and meals are prepared separately; client is incontinent of bowel and/or bladder and laundry is completed separately; client's shopping is completed separately due to special dietary needs and food is purchased from specialty stores; etc.

Adult Services Manual (ASM) 120, 5-1-2012,
Pages 1-5 of 5

Adult Services Manual (ASM) 101, 11-1-11, addresses services not covered by HHS:

Services not Covered by Home Help

Home help services must **not** be approved for the following:

- Supervising, monitoring, reminding, guiding, teaching 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 (such as house cleaning, laundry or shopping).
- Services provided by another resource at the same time (for example, hospitalization, MI-Choice Waiver).
- Transportation - See Bridges Administrative Manual (BAM) 825 for medical transportation policy and procedures.
- Money management such as power of attorney or representative payee.
- Home delivered meals.
- Adult or child day care.
- Recreational activities. (For example, accompanying and/or transporting to the movies, sporting events etc.)

Note: The above list is not all inclusive.

Adult Services Manual (ASM) 101, 11-1-2011,
Pages 3-4 of 4.

In the present case, the Department received a referral for the Appellant for the HHS program on or about January 25, 2013. (Exhibit 1, page 7)

On [redacted], the ASW went to the Appellant's home to complete an initial evaluation. The Appellant, her friend, and a representative from the home care agency were present. The ASW went over the ADLs and IADLs included in the HHS program. The ASW utilized a chart that goes over the parts of each ADL. Regarding bathing, the chart does include whether or not assistance is needed getting in and out. The ASW understood that the Appellant was independent with the ADLs included in the HHS program. The needs for assistance reported to the ASW were with IADLs, such as housework, laundry, and shopping. The ASW also called the Appellant's doctors office to clarify the DHS-54A Medical Needs form because it appeared two types of ink were used in completing the form and it was difficult to read the last diagnosis listed. It was reported that in section I of the form, the doctor only checked the "yes" box and did not check the actual activities. (Exhibit 1, pages 9-11; ASW Testimony) Accordingly, the ASW concluded that the Appellant did not have a medical need for assistance with any ADLs and denied the Appellant's HHS application.

The Appellant disagrees with the denial. The Appellant's representative asserted that the Appellant does require some hands on assistance with ADLs and therefore qualifies for HHS. The Appellant testified she has COPD, trouble breathing, atrial fibrillation, and neuropathy in her feet. The Appellant cannot walk far and cannot get in the shower by herself. The Appellant also cannot do stairs, therefore she cannot do the laundry. The Appellant needs help. The Appellant does not know who checked that activities in section I of the DHS-54A Medical Needs form and stated the only thing she changed was to correct the spelling of her name. The Appellant also testified that she needs more help now than she did at the time of the ASW's home visit. (Appellant Testimony)

The Appellant's friend testified she has been providing services for the past few months, including vacuuming, changing the bed, cleaning up the yard from the dog, shopping and errands, and meal preparation. The Appellant's friend has also helped the Appellant with shower transfers, putting in hand rails and getting the Appellant a shower chair. (Friend Testimony)

The evidence was not sufficient to establish the Appellant had a need for hands on assistance, functional ranking 3 or greater, with at least one ADL, at the time of this initial assessment based on the information available. The ASW credibly testified that no needs for hands on assistance with ADLs were reported during the [redacted] home visit. While there is a check mark next to bathing on the DHS-54A Medical Needs form, the Appellant's doctor's office reported that the doctor did not check of the specific activities in section I of the form. It is also noted that the DHS-54A Medical Needs form did not include all of the diagnoses reported by the

Appellant, such as COPD and neuropathy in feet. Based on the available information the Appellant did not require hands on assistance, functional ranking 3 or greater, with at least one ADL at the time of the ASW's initial assessment. Accordingly, the denial of the Appellant's HHS application must be upheld.

The Appellant's testimony indicated there have been some changes in her condition, functional abilities and needs for assistance. If she has not already done so, the Appellant can re-apply for the HHS program at any time and provide updated medical verification.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

/s/
Colleen Lack
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

Date Signed: [redacted]

Date Mailed: [redacted]

CL/db

cc: [redacted]

***** 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.