

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:

██████████,

Appellant

Docket No. 2013-26887 HHS

Case No. ██████████

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 ██████████. The Appellant was represented by her daughter/choreprovider. She had no witnesses. The Department was represented by ██████████, Appeals Review Officer. His witness was ██████████, ASW.

PRELIMINARY MATTER

The Department sought dismissal as there was no action taken by the Department. The motion was dismissed because - heretofore unknown to the Department's representative - the Appellant had asked for additional services which were denied. While the Appellant's petition suggests solely a compensation issue the testimony of the Appellant's representative proved that the issue on appeal was the Appellant's need for additional services.¹

ISSUE

Did the Department properly assess the Appellant for Home Help Services?

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 ██████-year old Medicaid-SSI beneficiary. (Appellant's Exhibit #1)
- 2) The Appellant is afflicted with the residuals of cardiac catherization, renal disease/kidney failure, status post pacemaker. HTN, incontinent of bowel and

¹ See FN (3).

bladder,² CHF, limited vision, right shoulder and neck pain, DM and dementia. (Department's Exhibit A, pp. 8, 9 and See testimony)

- 3) The Department's witness testified that her case is at the local limit for compensation of services to the Appellant. Care cost is established at \$ ██████████ per month at 161:05 hours per month. (See Testimony and Department's Exhibit A, p.11)
- 4) As of the last [recorded] assessment the Appellant was found not eligible for Expanded Home Help Services (EHHS). (See Testimony of ASW ██████████)
- 5) The Appellant currently receives the full array of ADL/IADL services at the above rates. (Department's Exhibit A, p. 11)
- 6) The last in-home assessment was conducted on ██████████. (Department's Exhibit A, p. 5)
- 7) The Appellant's choreprovider is her daughter ██████████, who was representing her mother at today's hearing. (Appellant's Exhibit #1)
- 8) The Department witness suggested that the choreprovider may have lived with the Appellant, but she said "[N]o – she did not." It was her testimony that owing to her mother's recent and significant change in condition she is required to provide many additional hours of hands-on care because of her mother's failing health. (See Testimony and Appellant's Exhibit #1)
- 9) The request for hearing on the instant appeal was received by the Michigan Administrative Hearing System for the Department of Community Health on ██████████. (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

² Apparently unknown to the Department. See Transcript and Department's Ex. A, pp. 8, 9.

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.

....

(Emphasis supplied)
Adult Service Manual (ASM), §120, page 1 of 5, 5-1-2012.

AVAILABLE SERVICES

PROGRAM DESCRIPTION

Independent living services offer a range of payment and nonpayment related services to individuals who require advice or assistance to support effective functioning within their home or the household of another.

Nonpayment Services

Nonpayment independent living services are available upon request, without regard to income or assets, to any person who needs some form of in-home service (except personal care services).

Nonpayment services include all services listed below:

- Information and referral.
- Protection (for adults in need of a conservator or a guardian, but who are not in any immediate need of protective intervention).
- Money management (Referrals to Social Security Administration).
- Housing (Referrals for Section 8 Housing).

Payment Services 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.

Expanded Home Help Services (EHHS)

Expanded home help services can be authorized for individuals who have severe functional limitations which require such extensive care that the service cost must be approved by the adult services supervisor/local office designee and/or the Department of Community Health.

Complex Care

Complex care refers to conditions requiring intervention with special techniques and/or knowledge. These complex care tasks are performed on client's whose diagnoses or conditions require more management. The conditions may also require special treatment and equipment for which specific instructions by a health professional or client may be required in order to perform.

- Eating or feeding assistance.
- Catheters or leg bags.
- Colostomy care.
- Bowel program.
- Suctioning.
- Specialized skin care.
- Range of motion exercises.
- Dialysis (In-home).
- Wound care.
- Respiratory treatment.
- Ventilators.
- Injections.

....

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....

(Emphasis supplied)
ASM 101 pp. 1 -4, 11-1-2011

The Department witness testified that as of the date of hearing ██████████ he did not believe the Appellant or the choreprovider required additional services or compensation.

The Appellant's representative vigorously disputed that assessment. She said that her mother has gotten worse recently and now requires much more hands-on care – particularly related to her incontinence of bowel and bladder. The Appellant's choreprovider said that her mother's dementia is worsening – although she has "...some good days."

The ASW testified that he was still comfortable with rankings - largely at the 4 level – although the level one (1) ranking for incontinence was obvious error. He stated "...she

**Docket No. 2013-26887 HHS
Hearing Decision & Order**

might be incontinent.” Indeed, the Department’s own exhibit, as well as the testimony of the Appellant’s representative, verified that fact.

On review, having found the Appellant’s testimony credible, I believe her testimony that her mother’s dementia and incontinence have worsened. This was a trustworthy assessment. I believe the ASW’s assessment, however, while accurate in [REDACTED] – appears now to be in need of updating.

It is the province of the ASW to determine eligibility for services; the ASM requires an in-home 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. The HHS policy also requires a comprehensive review at 6-months and annual intervals – or when necessary. *Supra*

The Appellant was reported to have undergone a significant change in condition by way of aggravated incontinence and increased dementia symptoms, thus suggesting the need for reassessment. Given the present status of the Appellant’s ILS - initiation of those steps necessary for EHHS evaluation appear to be necessary.

The Appellant has met her burden of proof to establish a potential change in condition for her mother the Appellant which must be investigated.³

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department’s assessment is no longer extant.

IT IS THEREFORE ORDERED that:

The Department’s decision is REVERSED.

IT IS FURTHER ORDERED that:

The Department shall schedule a reassessment of the Appellant per MDCH policy and then, if required, initiate steps to secure an Expanded Home Help Services review.

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

³ Although she opposes the idea – it may also signal the need for a more restrictive environment for the Appellant.

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Docket No. 2013-26887 HHS
Hearing Decision & Order

[REDACTED]

cc:

[REDACTED]

Date Signed: 6/21/2013

Date Mailed: 6/21/2013

***** 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.