

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. 2013-32011 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 appeared without representation. She is her own guardian. Her witness was ██████████, choreprovider. ██████████, represented the Department. Her witnesses were; ██████████, ASW and ██████████, ASW supervisor.

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 DJD of the low back, sciatica, anxiety, schizophrenia, HTN, severe depression,¹ bipolar disorder, and hyperlipidemia. (Department's Exhibit A, pp. 7, 8, 10 and Appellant's Exhibit #1 – throughout)
- 3) The Department's witness testified that on in-home assessment he was able to determine that the Appellant still needed assistance with home help. Care cost was reestablished at \$██████ per month at 9:15 hours per month. (See Testimony and Department's Exhibit A, pp. 2, 16, 19-22)

¹ Her psychiatrist notes significant impairment with suicidal ideation and recent hospitalization "...because she was a danger to herself." Department's Exhibit A, at page 7

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- 4) The ASW determined that the Appellant still required assistance with the ADL of bathing, while still requiring assistance with the IADLs of medication, housework, laundry, shopping and meal preparation. (See Testimony and Department's Exhibit A, p. 21)
- 5) The in-home assessment was conducted on [REDACTED]. (See Testimony and Department's Exhibit A, pp. 2 and 16)
- 6) The Department witness [REDACTED], ASW] said he properly assessed the Appellant and continued HHS – while explaining to the Appellant and her choreprovider that monitoring and supervision were not compensable home help services. (See Testimony and Department's Exhibit A, pp. 2, 9 and 14)
- 7) The Appellant's witness testified that the Appellant needs additional hours of HHS within current categories of assistance – however the ASW added that they provided no justification for additional time in any current category of HHS hands on assistance. (See Testimony)
- 8) The request for hearing on the instant appeal [seeking more hours] 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.

....

(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.

Home Help Services for Minor Children

When providing for minor children, personal care services must be shown to be a necessary supplement to usual parental care, justified by the high service needs of the family. High service needs are those which arise from a physical, medical, emotional, or mental impairment of the minor child and which require significantly higher levels of intervention than those required by a child of the same age without similar impairments.

Example: It is expected that a one year old child would be incontinent due to age; however, a 16 year old minor would likely have a medical or cognitive condition causing incontinence.

Children typically have responsible relatives (parents/adoptive parents) able and available to provide for their care needs. When responsible relatives are unable due to a medical condition, or unavailable due to employment or school, they can hire a provider to perform the activities of daily living and medication administration required during the parent's absence.

Note: A medical needs form must provide verification the responsible relative is unable to provide care. If the responsible relative is unavailable due to employment or school, they must provide a work or school schedule to verify they are unavailable to provide care.

The adult services specialist must not authorize approval for tasks that can be completed by the responsible relative during the time they are available.

Note: A legal guardian is not a responsible relative and can be paid to provide home help services to the minor child.

Payments are only for the amount of time related to the approved tasks and cannot include time for child care, supervision and monitoring.

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.

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- 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 on in-home assessment he observed that the Appellant demonstrated a continued need for assistance with the ADL of bathing. Additionally, he noted that the IADLs of medication, laundry, housework, shopping and meal preparation were still extant as supported by certification of the Medicaid enrolled physician on the DHS 54A Medical Needs form executed in late ██████████.

He reauthorized HHS for the Appellant at 9:15 hours per month or a cost of care in the amount of \$ ██████████ per month.

At hearing, the Appellant's witness testified that the Appellant required more hours of HHS service for the categories of medication (preparation) and therapy. She was not able to explain how the existing allocation was inadequate.

Prepared post assessment - the ASW was not aware [at the time of the comprehensive assessment] of the letter prepared by the Appellant's physician, ██████████, MD, who noted the Appellant's inability to care for herself owing to "...schizophrenia and severe depression." (Department's Exhibit A, at page 7)

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 Appellant meets this requirement. However, HHS policy also requires a comprehensive review at 6-months and annual intervals – or when necessary. *Supra*

The Appellant was reported to have increased need post assessment thus suggesting the potential of a significant change in condition for which she might marshal additional medical evidence and seek reassessment through her ASW - unless the Department acts first.²

At the time of assessment the Appellant demonstrated need for assistance with an ADL and IADLs. The HHS program does not provide services for supervision or monitoring. The Department's assessment was correct at the time it was rendered.

² The most current medical evidence regarding the Appellant versus her existing DHS 54A suggests *another* hospitalization and *aggravation* of her previous diagnosis. If there has been increased hospitalization(s) and treatment as referenced today then presumably there would be additional documentation to report via DHS 54A Medical Needs form. The ASW supervisor, ██████████, agreed that DHS policy requires assessment "...as often as necessary." (See Department's Exhibit A, page 7 and 8)

The Appellant has failed to preponderate her burden of proof that the Department erred in reauthorizing HHS at 9:15 hours per month.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly assessed the Appellant's eligibility for HHS and determined the correct amount of services.

IT IS THEREFORE ORDERED that:

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

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

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CC:

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Date Signed: 5/29/2013

Date Mailed: 5/29/2013

***** 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.