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.: 14-013334 HHS
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.*, upon the Appellant's request for a hearing.

After due notice, a hearing was held on [redacted]. The Appellant appeared on his own behalf and offered testimony. The Appellant's brother [redacted] also offered testimony on the Appellant's behalf. [redacted], Appeals Review Officer, represented the Department of Community Health (Department). [redacted], Adult Services Worker (ASW), appeared as a witness for the Department.

ISSUE

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

FINDINGS OF FACT

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

1. In [redacted], the Appellant requested HHS. (Testimony)

2. On [redacted], the Department received a completed 54A. The 54A indicated the Appellant needed assistance with Instrumental Activities of Daily Living (IADL's) of taking medication, meal preparation, housework, laundry and shopping and assistance with Activities of Daily Living (ADL's) of dressing, transferring and mobility. (Exhibit A, p. 13; Testimony)

3. On [redacted], the ASW conducted an in-home assessment with the Appellant and the Appellant's Provider. During the assessment, the Appellant indicated he needed assistance with housework, errands,

laundry, meal preparation, mobility and dressing. (Testimony)

4. On [redacted], the ASW entered her notes into the General Narrative section in ASCAP. (Testimony)

5. On [redacted], the Department sent the Appellant an Adequate Negative Action notice. The notice indicated the Appellant's HHS request was being denied. (Exhibit A, pp. 5-7; Testimony)

6. On [redacted], the Michigan Administrative Hearings System (MAHS) received a request for hearing from the Appellant. (Exhibit A, p. 4)

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.

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) 101, 11-1-11, addresses HHS payments:

> **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.
>
> *Adult Services Manual (ASM) 101, 12/1/2013, Page 2 of 5.*

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.

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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 120, 5-1-2012), pages 1-4 of 5 addresses the adult services 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 will 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 IADLs 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

The ASW testified that during the Assessment, the Appellant indicated he only needed assistance with IADL's and neglected to mention any need for assistance with an ADL.

Because the information provided by the Appellant was in conflict with the 54A that was returned, the ASW testified she made a collateral contact with the Appellant's treating physician (whom filled out the 54A) and was allegedly told by the physician that the Appellant told him what he needed assistance with and he completed the form as told. The Appellant disputes these claims and offered testimony in direct contradiction. The Appellant testified that he told the ASW during the assessment that he needed help in the areas of bathing, and dressing in addition to the IADL's mentioned by the ASW. The Appellant also indicated that he never told his doctor what to fill out on the form.

Because the two sets of testimony are in direct conflict and contradict one another, this became an issue of credibility in determining what actually transpired.

Factually, the ASW had several holes in her testimony. The first issue dealt with the records that were kept. The ASW testified she did not enter her notes into the general narrative until [redacted] and when she did enter them, it included all of the entries (assessment and collateral contacts). The notes were not entered shortly after the events transpired and were not labeled to indicate specifically when the events took place. It is not out of the question to believe that between [redacted] and [redacted] that facts were forgotten or possibly lost in translation.

The second issue with the ASW's testimony is that the ASW referred to Dr. [redacted], M.D. as a [redacted] at least two different times; and only after the Appellant testified that Dr. [redacted] was male and confronted about her earlier testimony did the ASW indicate Dr. [redacted] was a male and that she erred in the earlier identification. At 19:58 in the hearing, the ASW testified she spoke to "Ms. Dr. [spelled out name]" and later at 21:04 when I asked the ASW directly, the ASW testified she spoke to a [redacted].

The third issue that I had with the ASW's testimony is that her notes found on page 12 of the hearing packet refer to the Appellant as a "she". While normally this wouldn't be an issue as errors do occur from time to time; it is the totality of the circumstances that lead me to believe that it is more likely than not, that things were forgotten between [redacted] and [redacted].

While the Appellant was unable to directly rebut the alleged statements made by Dr. [redacted], the testimony in large part was hearsay with no identifiable exception to the rule. And while hearsay is generally allowed in administrative hearings under Section 75 of the APA, I find the statements themselves were highly prejudicial.

Because of the inaccuracies and less than whole testimony provided by the ASW, I find the Appellant to be slightly more credible than the ASW. That being said, I do not find that an accurate and complete assessment was conducted. And for this reason, find sufficient evidence to reverse the Department and order them to conduct a new assessment and issue retroactive benefits if otherwise eligible and qualified.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED THAT:

The Department's decision is REVERSED.

The Department is ordered to:

1. Reassess of the Appellant for HHS retroactive to the earliest date of eligibility and issue retroactive benefits if otherwise eligible and qualified.

Corey Arendt
Administrative Law Judge
for Director, Nick Lyon
Michigan Department of Community Health

Date Signed: [redacted]

Date Mailed: [redacted]

CA[redacted]

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.