STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES
P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 373-4147

IN THE MATTER OF:

[redacted],

Docket No. 15-014536 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.*, and upon Appellant's request for a hearing.

After due notice, a telephone hearing was held on [redacted]. Appellant's mother and provider appeared and testified on behalf of Appellant. Appellant has cognitive deficiencies. [redacted], Appeals Review Officer represented the Respondent. [redacted], Adult Services Supervisor and [redacted], Adult Services, appeared and testified for Respondent.

Adult Services Worker appeared to testify on behalf of the Michigan Department of Health and Human Services (MDHHS or the Department).

ISSUE

Did the Department improperly fail to complete a reassessment of Appellant's Home Help Services (HHS) case?

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 Medicaid benefit recipient, who receives SSI. His date of birth is [redacted].

2. On [redacted], Appellant provided a DHS 54-A Medical Needs form which indicates that he is diagnosed with: Cognitive Impairment, Cerebral Palsy, Autism, Microcephaly, Attention Deficit Hyperactive Disorder and Fetal Alcohol Syndrome. Appellant's condition is lifelong and irreversible.

3. On [redacted], the original Adult Services Worker (ASW) [redacted], conducted an in-home assessment with Appellant and his provider. She

determined that Appellant needs assistance with meal preparation, bathing, grooming, dressing, medication, housework, laundry and shopping. (Administrative Law Judge (ALJ) Exhibit 1)

4. The ASW gave Appellant 33:03 hours per month or $[redacted] in HHS for bathing, grooming, dressing, housework, laundry, shopping and meal preparation. (ALJ Exhibit 13)

5. The ASW sent the Appellant a Services and Payment Approval Notice, informing him that the assessment had been completed and that he is eligible for Home Help Services.

6. On [redacted], the ASW conducted a redetermination interview/home assessment with Appellant and his provider. The provider expressed concern about the Time and Task assessment. The provider stated that Appellant cannot cut his food or take his own medications and he needs assistance with toileting. The provider wanted those tasks added to time and task logs. The ASW determined that provider logs had not been turned in. (ALJ Exhibit 1)

7. On [redacted], the ASW notes that the provider forwarded her third quarter logs. (ALJ Exhibit 1)

8. On [redacted], the Michigan Administrative Hearing System (MAHS) received Appellant's request for hearing, protesting the start date of HHS payments and asking for increased payment [redacted] through [redacted].

9. On [redacted], a new ASW (A. Edwards) conducted a home visit with Appellant and his provider and Appellants needs were discussed. It was determined that there were no changes in Appellant's condition. (ALJ Exhibit 1)

10. On [redacted], the ASW sent Appellant an Advance Negative Action Notice informing him that Home Help Services would be terminated effective [redacted] because second quarter logs had not been submitted. (State's Exhibit A page 2)

11. On [redacted], the second quarter logs were received by the Department. State's Exhibit A page 8)

12. On [redacted], the first quarter logs were received by the Department. (State's Exhibit A page 8)

13. On [redacted], Appellant's provider contacted the new ASW ([redacted]

[redacted]) and again updated her time and task stating that she provides Appellant with assistance with toileting due to his incontinence 4-5 times daily. She assists him with bathing daily. Provider assists client with medication by putting drops in his ears due to his inability and cognitive delays to ensure he takes his medication on a daily basis. All tasks were updated and payments were submitted. (ALJ Exhibit 1)

14. A new Time and Task was determined. Appellant was approved for HHS for assistance with bathing, grooming, dressing, toileting, eating, medication, housework, laundry, shopping and meal preparation for a total of 71:01 hours per month or $[redacted] from [redacted] through [redacted]. (State's Exhibit A pages 17-18)

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.

Pertinent Department Policy states:

Clients have the right to contest a department decision affecting eligibility or benefit levels whenever they believe the decision is incorrect. The department provides an administrative hearing to review the decision and determine its appropriateness in accordance to policy. This item includes procedures to meet the minimum requirements for a fair hearing.

Efforts to clarify and resolve the client's concerns must start when the hearing request is received and continue through the day of the hearing. Bridges Administrative Manual (BAM) 600, page 1

Dissatisfaction with a department action may be expressed, orally or in writing, without specifically requesting a hearing. Determine whether there is actually a desire to request a hearing. If so, ensure that the request is put in writing. The DHS-18, Request for Hearing, available from DHS, may be used. Note the date of receipt of the original written request on the form/notice. BAM 600, page 2

MAHS may grant a hearing about any of the following:

- Denial of an application and/or supplemental payments.
- Reduction in the amount of program benefits or service.
- Suspension or termination of program benefits or service.
- Restrictions under which benefits or services are provided.
- Delay of any action beyond standards of promptness.

- For **FAP only**, the current level of benefits or denial of expedited service. BAM 600 page 5.

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.

ASM 120, page 1, specifically states:

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.

Home help services are available if the client meets all eligibility requirements. An independent living services case may be opened for supportive services to assist the client in applying for Medicaid (MA).

Home help services payments cannot be authorized prior to establishing Medicaid eligibility and completing a face-to-face assessment with the client. Once MA eligibility has been established, the case service methodology **must** be changed to case management.

Home help eligibility requirements include **all** of the following:

- Medicaid eligibility.
- Certification of medical need.
- Need for service, based on a complete comprehensive assessment indicating a functional limitation of level 3 or greater for at least one activity of daily living (ADL).
- Appropriate Level of Care (LOC) status. ASM 105, page 1

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

- 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. ASM 105, page 3

A referral may be received by phone, mail or in person and must be entered on ASCAP upon receipt. The referral source does not have to be the individual in need of the services. The adult services specialist must determine eligibility within the 45 day standard of promptness which begins from the time the referral is received and entered on ASCAP. The referral date entered on ASCAP must be the date the referral was received into the local office. The computer system calculates the 45 days beginning the day after the referral date and counting 45 calendar days. If the due date falls on a weekend or holiday, the due date is the next business day.

When a signed DHS-390 serves as the initial request for services, the referral date must be the date the application was received in the local office. ASM 110, page 1

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).]

Pertinent DHS policy dictates:

The client has the right to choose the home help provider(s). As the employer of the provider, the client has the right to hire and fire providers to meet individual personal care service needs. Home help services is a benefit to the client and earnings for the provider.

The determination of provider criteria is the responsibility of the adult services specialist.

Adult Services Manual 135, page 1, ASB 2013-004, December 1, 2013.

All home help providers **must** be enrolled in Bridges by a designee at the local county DHS office prior to authorizing payment. Once a provider is enrolled, Bridges will assign the provider a seven digit identification number. The adult services specialist must allow 24 hours from the time of enrollment for Bridges to interface with ASCAP. *ASM 135, page 4.*

In this case, Appellant's provider began providing services [redacted] and performed services continuously. The provider would like to be paid for work from the date of referral. The provider testified that she filled out all forms that were sent to them and returned them to the Department in a timely manner. Appellant testified that she contacted the Adult Services Worker's supervisor.

The evidence on the record indicates that Appellant was originally approved for HHS in [redacted] at $[redacted] per month. At some point, the provider protested the Time and Task Assessment. Based upon Department records, a redetermination was conducted by the original caseworker on [redacted]. However, evidence on the record indicates that the original ASW failed to update the determination of Time and Task, even though she noted in her notes that the provider gave her the additional Time and Task information. Sometime between [redacted] and [redacted], the original ASW ([redacted]

[redacted]) left the Department. No action was taken on Appellant's case until a home visit was conducted by the new ASW ([redacted]).

Appellant's provider credibly testified that the original ASW told her that she would increase the Time and Task after the [redacted] in-home visit, but she never heard anything else from the ASW. Appellant's provider testified that she left voicemail messages with the ASW but the ASW never contacted her. Finally, she sent a letter to the ASW about the Time and Task adjustment on [redacted], but received no response. She then filed a request for a hearing on [redacted], to request a review of the personal care services, stating that the ASW ([redacted]) stated that she would update the services but never did so.

Department policy explicitly dictates:

> The assessment must be updated **as often as necessary**, but **minimally** at the six month review and **annual** redetermination.

Thus, the Department ASW was required to conduct the redetermination assessment with Appellant (upon Appellant's request) in [redacted]. She conducted the interview in accordance with policy. The ASW was also required to take action on the redetermination. She did not notify Appellant of any action she had taken, whether an increase, remain the same or decrease, in HHS occurred as a result of the reassessment interview.

The Department has not established by the necessary competent, substantial and material evidence on the record that it was acting in accordance with Department policy when it determined that the increased HHS benefit should begin [redacted] once both the home visit and the all other appropriate documentation paperwork was completed. The Department caused the delay in establishing the correct level of benefits by failing to take action after the [redacted] redetermination assessment. The Department's failure to take action must be reversed.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Appellant's Representative has established by a preponderance of the evidence that [redacted] was the appropriate begin date for Appellant's increased HHS.

IT IS THEREFORE ORDERED THAT:

The Department's decision is **REVERSED**. The Department is **ORDERED** to increase Appellant's HHS services to 71:01 hours per month for the time period of [redacted] forward; and **ORDERED** to pay to Appellant any additional benefits to which he is entitled from [redacted] through [redacted], if Appellant is otherwise eligible to receive these benefits.

Landis Y. Lain
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Health and Human Services

LYL[redacted]

cc: [redacted]

Date Signed: October 27, 2015

Date Mailed: October 27, 2015

***** 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.