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. 15-020374 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, an in-person hearing was held with all parties except for the Department's representative at the [redacted] Department of Health and Human Services on [redacted]. Appellant personally appeared and testified.

[redacted], Appeals Review Officer, represented the Department by conference telephone. Two witnesses appeared on behalf of the Department in person: [redacted], and [redacted], Adult Services Workers (ASW).

ISSUE

Did the Department properly deny Appellant's Home Help Services (HHS) application on the grounds that Appellant did not have an activity of daily living (ADL) rating of 3 or higher?

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 [redacted] year old male beneficiary of the welfare Medicaid and SSI programs. Appellant's diagnoses include DJD, generalized osteoarthritis, diabetes mellitus, carpel tunnel syndrome, and prostate cancer. Appellant's cancer is in remission. (Exhibit A; Exhibit I; Testimony).

2. On [redacted], the Department received a referral on behalf of Appellant. (Exhibit A.5)

3. On [redacted] the Department conducted an in-person assessment at Appellant's residence. The ASW's notes indicate that Appellant represented that he uses a walker but does not have one; observed walking and transferring without difficulty and without equipment; observed picking up a bag of pills; retrieved cane from his bedroom. Appellant also represented that he has good and bad days. Appellant also represented that he was unable to meet any of his personal needs, and also indicated during the assessment that he can bathe self except for reaching his back, he can toilet, dress self, prepare simple food, and wash dishes. The ASW notes indicate that Appellant's cancer is in remission. (Exhibit A.9; Testimony).

4. Appellant brought his cane to the administrative hearing.

5. On [redacted], the Department issued a Negative Action Notice informing Appellant that his HHS application was denied due to Appellant not meeting Department policy regarding ADLs and ADL ranking. (Exhibit A.6-8).

6. On [redacted], Appellant filed a Hearing Request on the grounds that "…I was denied a full and fair in-home comprehensive assessment interview by worker …my medical related disabilities and qualifications for assistance recently determined by medical experts/doctors!" (Exhibit A.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.

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.

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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) 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.
>
> ***

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.

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.

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.

Adult Services Manual (ASM) 101, 5-1-2013
Page 2 of 5.

Under the ASM 101-Available Services manual, policy states that "needed services are determined by the comprehensive assessment conducted by the adult services specialist. ASM, 12-1-2013, Page 2 of 5.

At the administrative hearing, Appellant offered into evidence a DHS-54A received by the Department on [redacted] with ADLs circled. Appellant argues that he believes that his physician should make the HHS determination, not the ASW. Appellant further argues that to allow the ASW to supersede a physician's assessment is not fair as an ASW is not a medical professional, only trained in social work.

The Department responded that policy gives the ASW discretion based on an in-person assessment to make a functional assessment which can supersede a physician's determination.

After a careful review of the credible and substantial evidence, this ALJ decides that Appellant is correct - ASWs' are not medical professionals, are not physicians, and are given authority over a physician if the assessment made indicates no functional assessment at a rank of 3 or greater. In fact, Appellant has correctly stated the policy found in ASM 101 and 115: "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, 115, p 1-2.

As to Appellant's argument that it is unfair, such is not a reviewable issue by an ALJ at an administrative hearing. The purview of an administrative law judge (ALJ) is to review the Department's action and to make a determination if those actions are in compliance with Department policy, and not contrary to law. The ALJ must base the hearing decision on the preponderance of the evidence offered at the hearing or otherwise included in the record.

Here, Appellant has the burden of proof. Appellant did not present credible and substantial evidence to support finding a hands-on requirement triggering eligibility for the HHS program as defined by the federal and state law. After a careful review of the record, this ALJ finds that the ASW's assessment here is supported by credible and substantial evidence of record. As such, the denial must be upheld based on the available information.

Appellant's argument that the policy is not fair is not a hearable issue at an administrative hearing. ALJs are charged with the duty to apply the facts to the law and policy. Appellant's disputes are more appropriate to take before the legislative body that authorizes the law and policy.

It is noted that Appellant's argument that he was eligible in [redacted], the Department correctly noted that the program requirements have changed since that time, as was indicated in the [redacted] Notice of Case Action in this matter.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

Spodarek

Spodarek
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Health and Human Services

Date Mailed: [redacted]

cc: [redacted]

JS/cg

***** 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.