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:

Docket No. 15-020695-HHS

[redacted],

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 Appellant's request for a hearing.

After due notice, a hearing was held on [redacted]. Appellant appeared and testified. [redacted], son, hearing representative, caregiver and witness, non-attorney, appeared on behalf of Appellant.

[redacted], Appeals Review Officer, represented the Department of Health and Human Services. [redacted], Adult Services Worker (ASW), and [redacted], Adult Services Supervisor, appeared as witnesses for the Department.

ISSUE

Did the Department do a proper assessment pursuant to Appellant's referral and case opening for her HHS grant?

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 female beneficiary of the welfare Medicaid and SSI programs. Appellant has not worked since [redacted]. (Exhibit A.9).

2. Appellant's diagnoses include seizures and back pain. (Exhibit A.16).

3. On [redacted], the Department received a referral on behalf of Appellant for the HHS program. (Testimony).

4. On [redacted] the Department conducted a review and completed an in-home visit. The ASW recorded that Appellant requested assistance with eating, toileting, bathing, dressing, and mobility. The ASW determined that

Appellant uses a walker for support and maneuvers around the house and that transferring and mobility will be ranked at a 3 without pay. The ASW ranked bathing, dressing, toileting and eating at a 3, along with other IADLs. Appellant and her provider were informed that payment cannot be approved until the criminal history is completed. (Exhibit A.).

5. Appellant's caregiver's criminal history check showed that he had a criminal conviction that would exclude him from providing HHS services unless the beneficiary made a personal choice election and waived the exclusion in writing. Appellant was informed of this requirement, and on [redacted] signed a statement waiving the crime and approving her chosen provider to care for her. (Exhibit A; Testimony).

6. The Department began payments on [redacted] - the date Appellant signed the waiver. (Exhibit A.2).

7. On [redacted] the Department issued a payment approval notice for $236.55 beginning [redacted]. (Exhibit A.6).

8. On [redacted], Appellant's Request for Hearing was received by the Michigan Administrative Hearing System.

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) 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, 11-1-2011, Page 1of 4.

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.

***

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 1-3 of 3

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.

***

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.

***

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*

On 9/2/14 the Medical Services Administration issued a Bulletin (MSA 14-40) which required in part, criminal background checks for all providers. Applicable to the case here, that bulletin states in part:

> Beginning October 2, 2014, all new provider applicants must fully meet the provision of this bulletin before being enrolled to provide services. (Exhibit A.36).

This policy indicates that certain convictions can be excluded - mandatory and permissive. Under certain circumstances, beneficiaries can sign a statement waiving the prohibition of their chosen provider if the beneficiary signs a statement waiving the same. This is called a personal choice selection. 42 USC 1320a-7. Here, Appellant's chosen provider fell under this category. Policy further states that until such statement is signed, eligibility criteria are not met.

Here, Appellant requested an administrative hearing to dispute the start date of payments, and, to request more hours than granted for the HHS program.

Regarding Appellant's dispute regarding the start date of payments, unrefuted evidence here is that Appellant did not make a personal choice selection in writing as required by statute and policy until [redacted]. Evidence indicates that the payments began on the same date - [redacted]. Under above cited policy and procedure, as well as law, eligibility criteria are not met until all the required verifications are completed. This was not done until [redacted].

Appellant also argues that the Department failed to process the referral here in a timely manner. Evidence indicates that the referral was made [redacted]. The Department conducted an assessment [redacted], which was not completed until Appellant signed the personal choice statement on [redacted]. Payments began on [redacted]. However, regardless as to which dates one chooses to focus on here as to the timeline, Appellant offered no law or policy that would allow her to prevail where eligibility criteria is not otherwise met.

As to the amount of hours, Appellant argues that she had a larger grant when she resided in another county. However, Appellant offered no law or policy that would allow her to prevail based on an assessment done previously in another county. Nor does this ALJ have jurisdiction to review the same.

As noted above, law and policy gives an ASW much discretion in assessing an applicant's HHS hours for the program. It is noted that the ASW's commentary regarding her medical opinion as to Appellant's medical conditions and treatments are not identified in services policy as a required assessment. At the same time, the ASW's overall assessment regarding Appellant's functional limitations are consistent with the ASW's observations and records in calculating the HHS grant here. In addition, the testimony regarding the calculation of hours is consistent.

Based on all of the evidence of record, this ALJ finds that Appellant failed to meet the burden of proof to establish that she needs more hours than assessed by the ASW and thus, the Department's assessment is credible. Based on a careful review of the credible and substantial evidence on the whole record, this ALJ finds that the Department's actions were in compliance with its policy, and supported by the documentary and testimonial evidence taken as a whole at the time the Department made its determination. Thus, the Department's assessment is upheld, and Appellant's request for more hours denied.

It is also noted that Appellant also asked to make a complaint regarding the conduct of a state employee. Such complaints are not hearable issues at an administrative hearing; Appellant may file such complaints at the local or central office.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department's allotment of Appellant's HHS grant was correct based on the available evidence.

IT IS THEREFORE ORDERED THAT:

The Department's decision in this case is hereby UPHELD.

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

Date Mailed: [redacted]

JGS/cg

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.