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. 15-023159 HHS
Case No. [redacted]

[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 telephone hearing was held on [redacted]. Appellant appeared and testified. [redacted], Appeals Review Officer, represented the Department of Health and Human Services (Department). [redacted], Adult Services Supervisor and [redacted], Case Manager appeared as witnesses for the Department.

State’s Exhibits A 1-43 were admitted as evidence.

ISSUE

Did the Department properly deny the Appellant’s Home Help Services (“HHS”) application?

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 beneficiary, date of birth [redacted].

2. Appellant is diagnosed with cardiomyopathy, atrial fibrillation, hypertension, a closed head injury, chronic low back pain and cervical radiculopathy. (State’s Exhibit A pages 11 and 15)

3. Appellant provided a DHS-54A Medical Needs form, dated [redacted], which indicates that he had a certified medical need for assistance with meal preparation, Shopping, laundry and housework

4. Appellant was receiving $262.84 per month in HHS benefits for assistance with housework, laundry, shopping, and mobility. (State’s Exhibit A page 10)

5. On [redacted], the department caseworker sent Appellant a notice letter that she would be conducting a home visit [redacted] between 8:00 AM and 02:00 PM. (State's Exhibit A page 5)

6. On [redacted], Appellant was not available for the home visit.

7. On [redacted], the department caseworker sent Appellant an Advance Negative Action Notice that his Home Help Services would be reduced to $[redacted] to reflect a shared household for meal preparation, housework, laundry and shopping effective [redacted]. (State's Exhibit A page 6)

8. On [redacted] the case closed because the caseworker had had no contact from Appellant.

9. On [redacted] Appellant filed a new application and the Department received a new referral for HHS.

10. On [redacted], the Department caseworker completed an in-home assessment with Appellant only. The caseworker did not identify ADLs needs and determined that Appellant had not established a need for assistance with ADLs.

11. On [redacted], the Department caseworker sent Appellant an Advance Negative Action Notice following her review, informing her that home help services would be terminated. The reason for this action is: Following the in-home assessment, completed on [redacted] it has been determined that at this time you no longer meet the criteria for this program based on DHHS policy effective [redacted]. (State's Exhibit A page 5)

12. On [redacted], the Department caseworker sent Appellant an Adequate Negative Action Notice which stated that following a review of Appellant's HHS, it has been determined that the services would not be authorized. The reason for this action is: Policy by the MDHHS requires the need for for hands on services of at least one ADL. The most recent assessment conducted did not identify a need for an ADL. Therefore your application for HHS is being denied. (State's Exhibit a page 12)

13. On [redacted], Appellant filed a request for a hearing to contest the Department's negative action.

14. Appellant testified at the hearing that he needs help with meal preparation, shopping, laundry and cleaning.

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.

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.

For case registration and disposition the department must:

> Print introduction letter, the DHS-390, Adult Services Application and the DHS-54A, Medical Needs form and mail to the client. The introduction letter allows the client 21 calendars days to return the documentation to the local office.
>
> **Note:** The introduction letter does **not** serve as adequate notification if home help services are denied. The specialist must send the client a DHS-1212A, Adequate Negative Action Notice; see ASM 150, Notification of Eligibility Determination.
>
> 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.
>
> **Note:** A medical need form does not serve as an application for services. If the local office receives the DHS-54A, a referral must be entered on ASCAP for the date the form

> was received in the local office and an application sent to the individual requesting services.
>
> After receiving the assigned case, the adult services specialist gathers information through an assessment, contacts, etc. to make a determination to open, deny or withdraw the referral; see ASM 115, Adult Services Requirements.
>
> ASM 110, pages 1-2 5-1-2013, ASB 2013-003

Medical needs are certified utilizing the DHS-54A, Medical Needs form and must be completed by a Medicaid enrolled medical professional. The medical professional must hold one of the following professional licenses:

- Physician (M.D. or D.O.)
- Physician Assistant
- Nurse Practitioner
- Occupational Therapist.
- Physical therapist. ASM 105, page 3 4-4-2015, ASB 2015-003

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.

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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) 105,
4-01-2015, 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.

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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, 12-1-2013
Pages 1-5 of 5

Certain services are not covered by HHS. ASM 101 provides a listing of the 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, 12-01-2013,
Pages 3-4 of 4.

A service plan must be developed for all independent living services cases. The service plan is formatted in ASCAP and interacts with the comprehensive assessment.

The service plan directs the movement and progress toward goals identified jointly by the client and specialist. **Service plans are to be completed on all new cases, updated as often as necessary, but minimally at the six month review and annual reassessment. ASM 130, pages 1-2.**

Service plan development practices will include the use of the following skills:

- **Listen actively** to the client.
- Encourage clients to **explore options** and select the appropriate services and supports.
- Monitor for **congruency** between case assessment and service plan.
- Provide the necessary supports to **assist** clients **in applying for resources**.
- Continually **reassess** case planning.
- Enhance/preserve the client's **quality of life**.

Monitor and document the status of all **referrals** to waiver programs and other community resources **to ensure quality outcomes**. ASM 130, page 2

Appellant testified on the record that he needs assistance with meal preparation, cleaning, laundry and transportation.

The Department has established by the necessary competent, substantial and material evidence on the record that it was acting in compliance with department policy when it denied claimant's application for HHS based upon the fact that Appellant did not establish a need for assistance with ADLs at the home assessment. Appellant has not established a medical necessity for assistance with ADLs. The Department's determination must be upheld.

This Administrative Law Judge finds that the Department representative provided detailed, credible evidence and testimony that the caseworker followed Department policy and procedure when she attempted to conduct a required home visit for purposes of HHS redetermination. This Administrative Law Judge finds that Appellant conceded on the record that he was not available to complete the home visit on the date the caseworker came to the home. There is no requirement in policy that Appellant must be given a second opportunity to conduct the in-home assessment. The worker was unable to complete the HHS in home assessment before the certification period ended or before the death of the Appellant.

Home Help Services cannot be authorized prior to completing a face-to-face assessment with the client. Appellant was not available for the entire home visit. Appellant/Provider did not establish credibly that she rescheduled the home visit and was available for the rescheduled home visit. The Department has established by the necessary competent, material and substantial evidence on the record that it was acting in compliance with Department policy when it cancelled Appellant's HHS benefits based upon its determination that Appellant was not available for the scheduled HHS home visit. The Department's decision to cancel Appellant's HHS case and to subsequently deny, the second application for HHS must be upheld.

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 did properly deny Appellant's HHS application. The Department did properly cancel Appellant HHS case.

IT IS THEREFORE ORDERED THAT:

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

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

LYL[redacted]

cc: [redacted]

Date Mailed: <u>March 1, 2016</u>

***** 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.