STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES
P.O. Box 30763, Lansing, MI 48909
(517) 373-0722; Fax: (517) 373-4147

IN THE MATTER OF:

MAHS Docket No. 15-011873 HHS

[redacted] [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.*, and upon Appellant's request for a hearing.

After due notice, an in-person hearing was held on [redacted], Appellant's daughter, appeared and testified on Appellant's behalf through the use of an [redacted] interpreter. Appellant and [redacted], Appellant's husband, also testified as witnesses for Appellant. [redacted] Appeals Review Officer, represented the Respondent Department of Health and Human Services (DHHS or Department). [redacted], Adult Services Worker (ASW), testified as a witness for the Department.

ISSUE

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

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 was referred for HHS. (Testimony of ASW).

2. At the time of the referral, and all times relevant to this action, Appellant's Medicaid scope of coverage was either "20" or "2C", and she had a Medicaid deductible/spend-down of at least [redacted] per month. (Exhibit A, page 7).

3. On [redacted], the Department sent Appellant written notice that her request for HHS was denied. (Exhibit A, pages 5-6).

4. Regarding the reason for the action, the notice of denial stated that Appellant "does not have full Medicaid which is required to receive home help services." (Exhibit A, page 5).

5. On [redacted], the Michigan Administrative Hearing System (MAHS) received the request for hearing filed in this action regarding that denial. (Exhibit A, pages 4-6).

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 statutes, 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 (4-1-2015) addresses the Eligibility Criteria for HHS and, with respect to that criteria, it states in part:

> **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.

Medicaid/Medical Aid (MA)

The client may be eligible for MA under one of the following:

- All requirements for Medicaid have been met.
- MA deductible obligation has been met.

The client must have a scope of coverage of either:

- 1F or 2F.
- 1D or 1K (Freedom to Work).
- 1T (Healthy Kids Expansion).
- 3G (Healthy Michigan Plan).

Clients with a scope of coverage 20, 2C or 2B are **not** eligible for Medicaid until they have met their MA deductible obligation.

Note: A change in the scope of coverage in Bridges will generate a system tickler in ASCAP for active services cases.

Medicaid Personal Care Option

Clients in need of home help personal care services may become eligible for MA under the Medicaid personal care option.

Discuss this option with the client and coordinate implementation with the eligibility specialist.

Conditions of eligibility:

- The client meets all Medicaid eligibility factors except income.
- An independent living services case is open.
- The client is eligible for home help services.
- The cost of personal care services is **more** than the MA excess income amount.

If **all** the above conditions have been satisfied, the client has met MA deductible requirements. The adult services specialist can apply the personal care option in ASCAP. The deductible amount is entered on the **MA History** tab of the Bridges **Eligibility** module in ASCAP.

> Use the DHS-1210, Services Approval Notice to notify the client of home help services approval when MA eligibility is met through this option. The notice must inform the client that the home help payment will be affected by the deductible amount, and that the client is responsible for paying the provider the MA deductible amount each month.
> Do **not** close a case eligible for MA based on this policy option if the client does not pay the provider. It has already been ensured that MA funds will not be used to pay the client's deductible liability. The payment for these expenses is the responsibility of the client.
>
> Changes in the client's deductible amount will generate a system tickler from Bridges.
>
> MA eligibility under this option cannot continue if the cost of personal care becomes equal to or less than the MA excess income amount.
>
> **Note:** See Bridges Eligibility Manual (BEM) 545, Exhibit II, regarding the Medicaid Personal Care Option.
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> *ASM 105, pages 1-2 of 4*

Here, the Department denied Appellant's request for HHS on the basis that, at all times relevant to this action, Appellant did not have full Medicaid, which is required to receive home help services. In support of that decision, the ASW also testified that Appellant's scope of coverage since the start of the year was either "20" or "2C", which reflected that she had a Medicaid deductible/spend-down, and that Appellant has never met that spend-down or been approved for active Medicaid in any month this year. The ASW further testified that he sent the denial without conducting a home visit or waiting to receive a completed medical needs form because of Appellant's long history of inactive Medicaid and failure to meet her spend-down. He further testified that he played no role in determining the existence or amount of the spend-down, and that those determinations were made by Appellant's Medicaid eligibility worker.

In response, Appellant's representative testified regarding her difficulties in contacting the ASW and frustration with the process of applying for HHS. She also testified that Appellant does not have a Medicaid eligibility worker that they are aware of, they do not understand how the spend-down was calculated, and that they have never seen anything regarding the scope of Appellant's Medicaid coverage. She further testified as to how Appellant's application was denied without any opportunity to submit the medical needs form that had been sent to her.

Appellant and her representative bear the burden of proving by a preponderance of the evidence that the Department erred in denying her request for HHS. Moreover, the undersigned Administrative Law Judge is limited to reviewing the Department's decision in light of the information available at the time the decision was made.

In this case, while it was not identified in the request for hearing, it appears that Appellant's primary dispute is with either the existence or amount of her spend-down. However, this appeal was solely about the denial of HHS and the undersigned Administrative Law Judge does not have jurisdiction over Medicaid determinations or calculations regarding spend-downs. To the extent Appellant and her representative have questions about her spend-down, the ASW in this case offered to speak with them off the record and to direct them to Appellant's Medicaid eligibility worker. Moreover, if she remains dissatisfied, Appellant may also file a request for hearing regarding her spend-down and another administrative hearing could be held in the appropriate forum.

Nevertheless, even though Appellant's real issue appears to be beyond the scope of these proceedings, the undersigned Administrative Law Judge must still address the issue that is before him, *i.e.* the denial of HHS, and he finds that the Department erred in denying Appellant's request for HHS.

While the record does indeed reflect that Appellant has had an unmet spend-down and inactive Medicaid since the beginning of [redacted] the above policy also expressly provides that clients with spend-downs may become eligible for Medicaid and HHS through the Medicaid Personal Care Option. The conditions of eligibility for the Medicaid Personal Care Option include requirements that the client meet all Medicaid eligibility factors except income; an independent living services case is open; the client is eligible for HHS; and that the cost of the HHS that would be approved, as determined by the Department following a functional assessment, is more than the spend-down amount. However, despite the existence of such an option, no functional assessment was ever completed in this case and Appellant was never considered for the Medicaid Personal Care Option.

It is not clear that Appellant would qualify for HHS in general or for the Medicaid Personal Care Option specifically. It is also not clear that the Medicaid Personal Care Option would even be something that Appellant would be interested in. However, it is also impossible to say that Appellant would not qualify for HHS through that option without the comprehensive functional assessment being completed. As such, the Department erred by denying Appellant's request on the sole basis that she did not have full Medicaid and it must reassess Appellant's request for HHS.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED THAT:

The Department's decision is **REVERSED** and it must initiate a reassessment of Appellant's request for HHS.

Steven Kibit
Administrative Law Judge
For Nick Lyon, Director
Michigan Department of Health and Human Services

Date Signed: [redacted]

Date Mailed: [redacted]

SK/db

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.