

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

P.O. Box 30763, Lansing, MI 48909
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IN THE MATTER OF:

Docket No. 2012-53615 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 hearing was held on [REDACTED]. [REDACTED] Appellant's daughter, and [REDACTED] son-in-law, appeared and testified on Appellant's behalf. Appellant also testified on her own behalf, with her daughter interpreting for her. [REDACTED] Appeals Review Officer, represented the Department of Community Health. [REDACTED] Adult Services Worker (ASW), from the Macomb County DHS-HHS Office appeared as a witness for the Department.

ISSUE

Did the Department properly terminate Appellant's 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 is a [REDACTED] Medicaid beneficiary who has been diagnosed with degenerative joint disease of the lumbar spine, diabetes, degenerative joint disease of the knees, and a cyst in her brain. (Exhibit 1, page 9).
2. Appellant has been receiving HHS for over ten years and, in the past, her HHS have included assistance with both Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADLs). (Testimony of Appellant's representatives; Testimony of [REDACTED]).
3. On [REDACTED] ASW [REDACTED] conducted a home visit and reassessment of Appellant's services, as required by policy. Both Appellant and her daughter were present for the visit. (Exhibit 1, pages 13-14).

4. Based on his assessment and information obtained from Appellant and her daughter during the home visit, ASW ████████ determined that Appellant did not meet the criteria for HHS as she no longer required any assistance with any ADLs. (Exhibit 1, pages 10-14; Testimony of ████████).
5. ASW Patyi did find that Appellant still required assistance with IADLs, but he still decided to terminate Appellant's HHS because Department policy requires that a client need assistance with at least one ADL to receive services. (Testimony of ████████).
6. On ██████████ the Department issued an Adequate Negative Action Notice to Appellant indicating that Appellant's HHS were being terminated. (Exhibit 1, pages 6-8).
7. On ██████████ the Department received Appellant's Request for Hearing in this matter. (Exhibit 1, page 5).

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 101 (11-1-2011) (hereinafter "ASM 101") and Adult Services Manual 120 (11-1-2011) (hereinafter "ASM 120") address the issues of what services are included in Home Help Services and how such services are assessed:

Home Help Payment Services

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.

Personal care services which are eligible for Title XIX funding are limited to:

Activities of Daily Living (ADL)

- Eating.
- Toileting.
- Bathing.
- Grooming.
- Dressing.
- Transferring.
- Mobility.

Instrumental Activities of Daily Living (IADL)

- Taking medication.
- Meal preparation/cleanup.
- Shopping for food and other necessities of daily living.
- Laundry.
- Housework.

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. [ASM 101, pages 1-2 of 4.]

Services not Covered by Home Help Services

Home help services must **not** be approved for the following:

- Supervising, monitoring, reminding, guiding or encouraging (functional assessment rank 2); [ASM 101, page 3 of 4.]

Functional Assessment

The **Functional Assessment** module of the **ASCAP** comprehensive assessment is the basis for service planning and for the HHS 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

ADL's and IADL's 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 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 determines 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. [ASM 120, pages 2-3 of 6.]

Here, it is not disputed that Appellant requires assistance with some IADLs and the dispute turns on whether Appellant requires assistance with any ADLs. As described

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above, an individual is only eligible to receive HHS for assistance with an IADL if he or she also has a need for assistance with an ADL at a level 3 or greater. See ASM 101, page 2 of 4; ASM 120, page 3 of 6.

The Department found that Appellant has no such need and is therefore ineligible to receive any type of HHS. That decision was based on the information obtained from Appellant and her daughter during the home visit regarding Appellant's needs. For the reasons discussed below, this Administrative Law Judge finds that the Department's decision must be sustained.

Appellant received assistance with ADLs such as bathing in grooming in the past, but each assessment stands on its own and the Department is required to evaluate a client's needs at the time of the assessment. In this case, Appellant first argues that the Department erred in determining Appellant's needs due to language issues and Appellant's inability to convey what she needs. However, Appellant's daughter was present during the reassessment and translated for Appellant. ASW ████████ testified that he was able to understand Appellant's daughter. The Department is also justified in relying on what it was told during the assessment.

Appellant's representatives also attempted to provide evidence from Appellant's doctors regarding her current medical conditions and needs. However, as explained during the hearing, this Administrative Law Judge is limited to reviewing the Department's decision in light of the information available at the time it made that decision. Therefore, evidence from Appellant's doctors produced after the termination of services is not relevant. To the extent Appellant now has new evidence in support of her claims, she can always reapply for HHS.

This Administrative Law Judge would further note that ASW Patyi's testimony was credible in this case. That testimony was also supported by ASW ████████ detailed notes taken at the time of the reassessment and describing exactly what he was told. (Exhibit 1, pages 13-14).

Appellant bears the burden of proving by a preponderance of the evidence that the Department erred in terminating her HHS. Here, given ASW ████████ credible testimony and notes, in addition to Appellant's unpersuasive arguments, Appellant has failed to meet that burden.

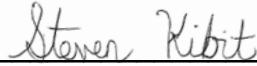
DECISION AND ORDER

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


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IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.



Steven Kibit
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

cc:



Date Mailed: 10-07-2012

***** 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.