

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH
P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 373-4147

IN THE MATTER OF:

██████████

Docket No. 2013-14126 HHS
Case No. ██████████

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 the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████ ██████████ a paralegal at ██████████, appeared and testified on Appellant's behalf. ██████████, Appellant's care provider, also testified on Appellant's behalf. ██████████, Appeals Review Officer, represented the Department of Community Health. ██████████, Adult Services Worker (ASW), appeared as a witness for the Department.

ISSUE

Did the Department properly determine that Appellant's Home Help Services (HHS) should be reduced?

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 ██████-year-old Medicaid beneficiary who has been diagnosed with schizoaffective disorder, chronic pain, Marfan syndrome, anxiety, migraines, seizure disorder, and asthma. (Respondent's Exhibit A, page 10).
2. Appellant has been receiving HHS in the amount of 108 hours and 21 minutes per month, with a total care cost of ██████████ per month. HHS was authorized for assistance with bathing, grooming, dressing, eating, toileting, transferring, mobility, housework, laundry, shopping, meal preparation, and taking medications. (Respondent's Exhibit A, page 18).

Fenton, Terry
Docket No. 2013-14126 HHS
Decision and Order

3. On [REDACTED] ASW [REDACTED] completed an in-home visit and reassessment of Appellant's services. (Respondent's Exhibit A, pages 15-16).
4. Following that home visit, ASW [REDACTED] decided to terminate the assistance authorized for eating; increase the assistance authorized for taking medications; and reduce the assistance authorized for laundry, meal preparation, and mobility. The assistance authorized for all other tasks would remain the same. (Respondent's Exhibit A, pages 18-19; Testimony of ASW [REDACTED]).
5. Overall, Appellant's HHS were to be reduced to 85 hours and 12 minutes per month, with a care cost of [REDACTED] per month. (Respondent's Exhibit A, page 19).
6. On [REDACTED] the Department sent a written notice notifying Appellant that her HHS would be reduced on [REDACTED] (Respondent's Exhibit A, pages 11-14).
7. On [REDACTED] the Michigan Administrative Hearing System (MAHS) received a request for hearing filed on behalf of Appellant. (Respondent's Exhibit A, page 5).
8. The proposed reduction has not yet been implemented and Appellant's HHS have remained in place at the higher amount while this appeal has been pending. (Testimony of Appellant's representative; Testimony of ASW [REDACTED]).

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 Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

Home Help Services 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 (5-1-2012) (hereinafter "ASM 120") address the issues of what services are included in Home Help Services and how such services are assessed. In part, ASM 101 provides:

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.

Fenton, Terry
Docket No. 2013-14126 HHS
Decision and Order

- 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.]

Moreover, ASM 120 states:

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

Fenton, Terry
Docket No. 2013-14126 HHS
Decision and Order

- 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 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.

Fenton, Terry
Docket No. 2013-14126 HHS
Decision and Order

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 5.]

Mobility and Laundry

As discussed above, the Department plans to make small reductions to the assistance authorized for the tasks of mobility and laundry. Specifically, assistance with mobility is to be reduced from 16 minutes a day, 7 days a week to 14 minutes a day, 7 days a week, while assistance with laundry is to be reduced from 49 minutes a day, 2 days a week to 45 minutes a day, 2 days a week. (Respondent's Exhibit A, pages 18-19).

According to both Appellant's representative and care giver, Appellant's needs for assistance with those two tasks have not changed and Appellant requires the same amount of assistance as before. (Testimony of Appellant's representative; Testimony of [REDACTED]).

During the hearing, ASW [REDACTED] could not explain the proposed reductions and testified that she had not intended to reduce HHS for those tasks. (Testimony of ASW [REDACTED]). Instead, she could only speculate that the Department's computer calculated the proposed amounts differently after she entered in the number of days needed. (Testimony of ASW [REDACTED]). Moreover, ASW [REDACTED] agreed that Appellant's needs have not changed in that area. (Testimony of ASW [REDACTED]). ASW [REDACTED] notes regarding the reassessment also make no mention of any reduction and they appear to indicate that HHS with respect to mobility and laundry should remain the same. (Respondent's Exhibit A, pages 15-16).

Given ASW [REDACTED] testimony that she did not specifically intend to reduce HHS for those two tasks, in addition to the complete lack of any evidence suggesting that such a reduction would be proper, this Administrative Law Judge finds that the Department erred in deciding to reduce Appellant's HHS with respect to mobility and laundry.

Meal Preparation and Eating

The Department also plans to reduce the assistance authorized for the task of meal preparation and terminate the assistance previously authorized for the task of eating. Specifically, assistance with meal preparation is to be reduced from 50 minutes a day, 7 days a week to 49 minutes a day, 7 days a week. (Respondent's Exhibit A, pages 18-19). Appellant is currently receiving 44 minutes per day, 7 days a week of assistance of HHS for assistance with eating. (Respondent's Exhibit A, page 18).

As with the tasks of mobility and laundry, the small reduction in assistance with meal preparation is a mistake. ASW [REDACTED], Appellant's representative and Appellant's care giver all testified that Appellant's needs for assistance with that task have not changed

Fenton, Terry
Docket No. 2013-14126 HHS
Decision and Order

and ASW [REDACTED] could not explain the proposed reduction. (Testimony of ASW [REDACTED]; Testimony of Appellant's representative; Testimony of [REDACTED]). ASW [REDACTED] also testified that she had not intended to reduce HHS for meal preparation and there is no evidence supporting such a reduction in the record. (Testimony of ASW [REDACTED]; Respondent's Exhibit A).

With respect to assistance with eating, ASW [REDACTED] testified that she based the termination on Appellant's report that Appellant could eat on her own and use utensils. (Testimony of ASW [REDACTED]). In response, Appellant's care provider testified that she has to cut up Appellant's food into small pieces for her and that she has to directly feed Appellant 10 to 15 times a month because Appellant cannot even raise a fork to her mouth on some days. (Testimony of [REDACTED]). According to [REDACTED], the only time the task of eating was discussed during the home visit was when ASW [REDACTED] asked Appellant if Appellant can swallow, which Appellant can do. (Testimony of [REDACTED]).

Even considering the dispute over what was said during home visit, Appellant's need to have her food cut up into small pieces is not disputed and that need justifies a reversal of the Department's decision to terminate eating assistance. ASW [REDACTED] wrote in her notes and testified that Appellant needs assistance with cutting her food into small portions. (Respondent's Exhibit A, pages 16, 21). However, in authorizing HHS, ASW [REDACTED] deemed that need to be a need for assistance with meal preparation and not eating. (Respondent's Exhibit A, pages 16, 21; Testimony of ASW [REDACTED]).

Based on the definitions provided in policy, a need for assistance with cutting up food falls under eating assistance. As defined in ASM 121, eating assistance is "helping with the use of utensils, cup/glass, getting food/drink to mouth, **cutting up/manipulating food on plate**, swallowing foods and liquids, cleaning face and hands after a meal" (ASM 121, page 1 of 4 (emphasis added by Administrative Law Judge)) while assistance with meal preparation is "[p]lanning menus. Washing, peeling, slicing, opening packages/cans, mixing ingredients, lifting pots/pans, reheating food, cooking, safely operating stove, setting the table, serving the meal. Washing/drying dishes and putting them away" (ASM 121, page 3 of 4). Moreover, a ranking of "3" for eating specifically includes "[h]elp with cutting up food or pushing food within reach[.]" (ASM 121, page 1 of 4).

Given the Department's error, it is clear that HHS for assistance with eating should not have been terminated and the Department's decision with respect to that task should be reversed as well.

Additionally, the fact that ASW [REDACTED] mistakenly considered assistance with cutting food to be assistance with meal preparation does not justify a reduction in the HHS authorized for assistance with that task. ASW [REDACTED] ranked Appellant a "five" in meal preparation (Respondent's Exhibit A, page 21), which means she is "Totally dependent on another for meal preparation." (ASM 121, page 3 of 4). ASW [REDACTED] also testified

Fenton, Terry
Docket No. 2013-14126 HHS
Decision and Order

that she always intended to authorize the maximum amount of assistance that can be authorized for assistance with meal preparation, *i.e.* 25 hours a month. (ASM 120, page 4 of 5). Given her ranking, as well as the testimony of ASW [REDACTED] Appellant would still be totally dependent in meal preparation and should still receive the maximum amount of assistance that could be authorized for that task even if cutting up food was considered to be assistance with eating.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department erred in deciding to reduce Appellant's Home Help Services.

IT IS THEREFORE ORDERED THAT:

The Department's decision is **REVERSED**. Appellant's HHS shall remain at the previously authorized total of 108 hours and 21 minutes per month, with a total monthly care cost of [REDACTED]

Steven Kibit

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

cc:

[REDACTED]

Date Mailed: April 16, 2013

***** 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.