

**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:

██████████

Appellant.

_____ /

Docket No. 2013-14628 HHS
Case No. ██████████

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 C.F.R. § 431.200 *et seq.*, upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. Appellant appeared and testified on his own behalf. ██████████ Appellant's caregiver also testified for the Appellant. ██████████, Appeals Review Officer, represented the Department of Community Health. ██████████, Adult Services Worker (ASW) from the ██████████ County DHS Office, appeared as a witness for the Department. ██████████ Children Services Supervisor was also present but did not testify.

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 ██████-year-old Medicaid beneficiary ██████████ who had been receiving HHS. (Testimony).
2. Appellant has been diagnosed with Bipolar Disorder, Chronic Depression, Anxiety, Chronic High Blood Pressure, and Obstructive Sleep Apnea. (Exhibit A, pp. 8, 16).
3. On ██████████, ██████████ ASW, did a home visit with the Appellant and did a face-to-face assessment to determine Appellant's continued eligibility for HHS. The ASW determined that Appellant did not meet the criteria for HHS as he did not need assistance with any of his ADLs. (Exhibit A, p. 12 and testimony).

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4. On [REDACTED], the Department issued an Advance Action Notice to Appellant informing him that his HHS would be terminated effective [REDACTED], as the in-home assessment did not show the Appellant required assistance with at least one ADL assessed at a level 3 or greater. (Exhibit A, pp. 4-6 and testimony).
5. On [REDACTED], MAHS received Appellant's Request for Hearing. Appellant stated in part that he had serious problems that prevent him from daily tasks of laundry, cleaning the house, dishes, cooking and shopping. (Exhibit A, p. 3).
6. On [REDACTED], Appellant's physician completed a DHS-54A certifying that Appellant had no medical need for assistance with any of his personal care activities. (Exhibit A, p. 16 and testimony).
7. On [REDACTED], another copy of the Appellant's DHS-54A was faxed to DHS. The face of the form had been altered to indicate that Appellant needed assistance with grooming, dressing, transferring, taking medications, meal preparation, shopping and/or laundry and housework. (Exhibit A, p. 16.5 and testimony).
8. On [REDACTED], Appellant's Clinical Social Worker with Community Mental Health for [REDACTED] wrote a To Whom It May Concern letter indicating Appellant had been diagnosed with Mood Disorder NOS and Anti Social Personality. The letter does not demonstrate that the Appellant has a need for hands on assistance with any of his activities daily living (ADLs). (Exhibit 1).

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.

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- 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: ██████████ is assessed at a level 4 for bathing however she refuses to receive assistance. ██████████ 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 of 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

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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: [REDACTED] is assessed at a level 4 for bathing however she refuses to receive assistance. [REDACTED] would

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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).

ASW [REDACTED] stated she conducted an in-home assessment with the Appellant on [REDACTED]. She stated she sent out an Advance Negative Action Notice to the Appellant on [REDACTED] stating that his HHS would be terminated effective [REDACTED], as the in-home assessment did not show the Appellant required assistance with at least one ADL assessed at a level 3 or greater. (See Exhibit A, pp. 4-6). The ASW also noted that the DHS-54A medical needs form completed by the Appellant's doctor on [REDACTED] did not indicate that the Appellant had a medical need for assistance with any of his ADLs, or IADLs. (See Exhibit A, p. 16 and testimony).

The ASW stated when she went to Appellant's for the assessment she reviewed all of his ADLs and IADLs and explained the new policy to him that required him to need at least one ADL assessed at a level 3 or greater. Appellant told her he needed help with laundry, shopping, housework and meal preparation, because he wasn't very good at them. Appellant told her he did not need help with personal care or hands on care with any of his ADLs. The ASW advised Appellant she would check to see if there were any other programs that could provide assistance to him.

The ASW stated based on the first Medical Needs Form, Appellant was not eligible for HHS because "No" was checked indicating he did not have a medical need for assistance with any of his personal care activities. She questioned the second copy of the Medical Needs form because it had been altered. The ASW stated that when she did her assessment of the Appellant she did not rank him with the need for assistance at a level 3 or greater for any of his ADLs. The ASW stated she believed that termination of Appellant's HHS was in accordance with the policy found in the Adult Services Manual.

The notes from her face-to-face demonstrate that the Appellant does not have any physical impairments that would prevent him from completing his ADLs. Appellant advised the ASW that he did not need help with grooming, dressing, continence, respiration, toileting, transferring, eating or mobility. Appellant stated that he needed help with cooking, cleaning, shopping, laundry, and his medications. Appellant advised he could physically complete all of these activities, but stated he needed help because he either couldn't do them well or didn't know how to do them. (Exhibit A, pp. 12).

During the hearing, Appellant stated he believes that the ASW had prejudged him. Appellant stated he thought he told the ASW he needed assistance with grooming; that

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he needs help with trimming his toe nails. He indicated he tears them off his toes if trims them. He also indicated that he has a C-PAP machine and that his caregiver has to take care of it and cleans it for him, but he stated he did not know if he told the ASW about the C-PAP machine.

The preponderance of reliable evidence in this case demonstrates that the Appellant does not need assistance with any of his ADLs. Appellant did claim he needed help with grooming, but the observations of the ASW and the first medical needs form from Appellant's doctor contradict his testimony in this regard. According to the policy quoted above, an individual is only eligible to receive HHS if he or she has a need for assistance with an ADL at a level 3 or greater. Furthermore, the need for services is determined by the comprehensive assessment conducted by the ASW and not by the Appellant's doctor. See ASM 101, pp. 1-3 of 4; ASM 120, page 3 of 6. Appellant has no such need and is therefore ineligible to receive any type of HHS. Accordingly, the Department's decision must be sustained.

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.

IT IS THEREFORE ORDERED THAT:

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

William D Bond

William D. Bond
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

cc:



Date Mailed: April 11, 2013

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***** 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.