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

[redacted],

Docket No. 2013-17080 HHS[1]
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 the Appellant's request for a hearing.

After due notice, a hearing was held on [redacted]. [redacted], Appellant's mother/legal guardian, appeared and testified on Appellant's behalf. [redacted], Appellant's sister/chore provider, also testified on Appellant's behalf. Appellant was also present during the hearing. [redacted], Appeals Review Officer, represented the Department of Community Health. [redacted], Adult Services Supervisor, and [redacted], Adult Services Worker (ASW), from the [redacted] County [redacted] Office appeared as witnesses for the Department.

## ISSUE

Did the Department proper 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] year-old Medicaid beneficiary who has been diagnosed as mentally disabled and with HIV and asthma. (Respondent's Exhibit A, page 8).

2. Appellant has been receiving HHS through the Department since [redacted]. (Respondent's Exhibit A, page 6).

3. In [redacted], Appellant was authorized for 44 hours and 9 minutes of HHS per

[1]This case was originally coded as a Home Help Provider (HHP), but, during the hearing, it became clear that Appellant is the recipient of HHS and that it is his services at issue. Accordingly, this matter was therefore recoded as a Home Help Services case (HHS).

month, with a total monthly care cost of $[redacted] per month. Specifically, Appellant was authorized for assistance with grooming, taking medication, housework, laundry, shopping, and meal preparation. (Respondent's Exhibit A, page 15).

4. On [redacted], ASW [redacted] went to Appellant's home to complete a scheduled home visit and assessment of Appellant's services. Appellant was outside working at the time and said he was busy. ASW [redacted] agreed to interview another client in the home first and then speak to Appellant. However, at the time she finished the other interview, Appellant had left the home. (Respondent's Exhibit A, page 14; Testimony of ASW [redacted]).

5. Both Appellant's mother and his care provider tried to telephone Appellant and get him to return, but he did not so and ASW [redacted] left. (Respondent's Exhibit A, page 14; Testimony of Appellant's representative; Testimony of ASW [redacted]).

6. On [redacted] the Department sent Appellant written notice that it was terminating his HHS effective [redacted] because it was unable to assess his continued eligibility for HHS. (Respondent's Exhibit A, pages 9-12).

7. The Department did not terminate Appellant's services on [redacted] and instead stopped the payments on August 30, 2012 because it had been over a year since his last assessment. (Respondent's Exhibit A, pages 13, 17; Testimony of Turner).

8. While payments were stopped, the Department did not close Appellant's case and ASW [redacted] scheduled another home visit and reassessment for [redacted]. (Respondent's Exhibit A, page 13; Testimony of ASW Hill-Fuqua).

9. ASW [redacted] telephoned prior to the visit in order to confirm it, but no one answered. When she went to the home, no one answered the door. (Respondent's Exhibit A, page 13; Testimony of ASW [redacted]).

10. After the second attempt at a home visit and interview failed, the Department closed Appellant's case. (Respondent's Exhibit A, page 6; Testimony of ASW [redacted]).

11. On [redacted], the Department received a Request for Hearing filed on behalf of the Appellant. (Respondent's Exhibit A, page 4).

## 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 (5-1-2012) (hereinafter "ASM 120") address the issues of what services are included in Home Help Services and how such services are assessed. For example, 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.
> - 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
- 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.
>
> 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.]

Appellant bears the burden of proving by a preponderance of the evidence that the Department erred in the amount of services it authorized. Moreover, this Administrative Law Judge is limited to reviewing the Department's decision in light of the information it had at the time it made the decision.

Here, the Department terminated Appellant's HHS because he had failed to appear for the home visits and it was unable to assess his continued eligibility for HHS. As clearly stated in policy, home visits and reassessments are periodically required in order to maintain benefits:

> **CASE REVIEWS**
>
> Independent living services (home help) cases must be reviewed every six months. A face-to-face contact is required with the client, in the home.
>
> * * *
>
> **Six Month Review**
>
> Requirements
>
> Requirements for the review contact must include:

- A review of the current comprehensive assessment and service plan.

- Verification of the client's Medicaid eligibility, when home help services are being paid.

- Follow-up collateral contacts with significant others to assess their role in the case plan, if applicable.

- Review of client satisfaction with the delivery of planned services.

- Reevaluation of the level of care to assure there are no duplication of services.

- Contact must be made with the care provider, either by phone or face-to-face, to verify services are being provided.

Documentation

Case documentation for **all** reviews must include:

- An update of the **"Disposition"** module in ASCAP.

- A review of **all** ASCAP modules with information updated as needed.

- A brief statement of the nature of the contact and who was present in the **Contact Details** module of ASCAP. A face-to-face contact entry with the client generates a case management billing.

- Documented contact with the home help provider.

- Expanded details of the contact in **General Narrative**, by clicking on **Add to & Go To Narrative** button in **Contacts** module.

- A record summary of progress in service plan. [ASM 155, pages 1-2 of 2; Respondent's Exhibit A, pages 18-19.]

Accordingly, the Department's policy sets forth clear requirements that must be met for HHS services to be continued. Among those requirements are a face-to-face contact with the client in the home and a review of the current comprehensive assessment and service plan every six months. Here, it is undisputed that the Department was unable to complete that home visit or reassessment because Appellant left his home after the Department's worker arrived. Appellant also failed to appear for the other home visit scheduled by the Department later. Without the home visit and updated comprehensive assessment, the Department is unable to evaluate Appellant's needs or authorize any services.

In response, Appellant's representative and witness assert that they did try to get Appellant to return for his assessment and that they and Appellant are willing to have the assessment rescheduled. However, at least one attempt at another home visit also failed and it is undisputed that the Department has been unable to complete the case review and reassessment required by policy in order to continue Appellant's HHS.

Moreover, the fact that the Department waited another two weeks after the date identified in the termination notice to actually terminate Appellant's HHS and that the Department did attempt to reschedule another home visit does not change the analysis in this case. As found above, the Department properly decided to stop the payments and it provided proper notice of that negative action. To the extent that the Department did not terminate the services and close out Appellant's case as provided in the notice, those actions were only in Appellant's favor and do not negate its earlier, proper action.

With respect to that action, this Administrative Law Judge finds that it should be affirmed for the reasons stated above. As indicated by the Department's representative and witnesses during the hearing, Appellant is free to re-apply for HHS at any time.

## 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**.

Steven Kibit

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

[redacted]
**Docket No. 2013-17080 HHS**
**Decision and Order**

cc: [redacted]

Date Mailed: 3/7/2013

***** 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.