

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

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IN THE MATTER OF:

██████████,

Appellant.

_____ /

Docket No. 2013-17105 HHS
Case No. ██████████

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 ██████████. ██████████ appeared and testified on Appellant's behalf. Appellant also testified on his own behalf. ██████████, Appeals Review Officer, represented the Department of Community Health. ██████████, Adult Services Supervisor; ██████████, Independent Living Services (ILS) Specialist; and ██████████, ILS Specialist; from the ██████████ County ██████████ Office appeared as witnesses for the Department.

ISSUE

Did the Department authorize the proper amount of 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 has been diagnosed with lumbar radiculopathy, low back pain, lumbar disc bulge, left knee medial meniscus tear, tendonitis, hip pain, and a torn ligament in his right knee. (Respondent's Exhibit A, page 9).
2. Appellant applied for HHS and, as part of his application, submitted a medical needs form signed by Dr. ██████████ in ██████████. (Respondent's Exhibit A, page 15).
3. In that medical needs form, Dr. ██████████ indicated that Appellant only has a medical need for assistance with bathing, grooming, transportation, meal preparation, shopping, laundry and housework. (Respondent's Exhibit A,

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page 15).

4. On [REDACTED] [REDACTED] conducted a home visit as part of the initial assessment. (Respondent's Exhibit A, page 12).
5. On [REDACTED], the Department sent Appellant a Services and Payment Approval Notice stating that, effective [REDACTED], Appellant was approved for 18 hours and 42 minutes of HHS per month, with a total monthly care cost of \$ [REDACTED]. (Respondent's Exhibit A, pages 7-8).
6. Specifically, Appellant was approved for assistance with the tasks of bathing, dressing, housework, laundry, shopping, and meal preparation. (Respondent's Exhibit A, page 14).
7. As Appellant lives in a shared household with another adult, the assistance authorized with housework, laundry, shopping, and meal preparation was prorated by one-half per policy. (Respondent's Exhibit A, page 10; Testimony of [REDACTED]).
8. On December 7, 2012, the Department received a Request for Hearing filed by Appellant. In that request, Appellant claims that not all the services he needs were approved. (Respondent's 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 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

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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.

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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

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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

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Law Judge is limited to reviewing the Department's decision in light of the information it had at the time it made the decision.

This case turns on the information the Department had at the time it made its decision. According to [REDACTED], Appellant was watching his grandchildren alone during the home visit. [REDACTED] also testified that Appellant told her that he required some hands-on, physical assistance with the tasks of bathing (getting in-and-out of the bathtub), dressing (some garments), housework, laundry (carrying loads of clothing), meal preparation, and shopping (carrying items). She subsequently authorized assistance with those tasks. [REDACTED] further testified that Appellant was ambulating without difficulty during the home visit and, when going through the tasks covered by HHS, he specifically reported that he could groom himself.

On the other hand, according to Appellant and his representative, he needs a much greater amount of assistance than what was authorized. According to their testimony, Appellant's provider also drives him to therapy and appointments with doctors. They further testified that Appellant's provider gives him medications and insulin; and that the provider assists Appellant with grooming at times, including help with shaving and clipping his nails. Appellant and his representative also testified that [REDACTED] misstated the extent of the assistance he requires with meal preparation and laundry.

As a preliminary matter, this Administrative Law Judge would note that transportation is not a task covered by HHS and therefore, regardless of whether Appellant needs someone to drive him places, the Department cannot authorize such assistance.

With respect to the assistance the Department can authorize, Appellant and [REDACTED] were the only adults present during the home visit and they testified to two completely different versions of what needs Appellant reported during the home visit and what information the Department had at the time it made its decision regarding Appellant's needs.

However, the Department also had the medical needs form submitted by Appellant and that the medical needs form submitted by Appellant supports [REDACTED] testimony in that it indicates that a lesser need for assistance than claimed by Appellant. Appellant asserts that the doctor completing the form changed some of the information submitted by Appellant, but the doctor is the one required to fill out the form and the Department is justified in relying upon it.

Given that medical needs form, in addition to the detailed notes taken by [REDACTED] at the time of the home visit and Appellant's undisputed ability to care to his grandchildren, this Administrative Law Judge finds [REDACTED] to be more credible than Appellant with respect to what she was told during the home visit. Moreover, given that credible testimony and the medical needs form, this Administrative Law Judge finds that Appellant has failed to meet his burden of proving by a preponderance of the evidence

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that the Department erred in the amount of services it authorized. Accordingly, the Department's decision must be affirmed.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department authorized the proper amount of 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

cc:

[REDACTED]

Date Mailed: 3/6/2013

***** 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.