

**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:

██████████,

Appellant.

_____ /

Docket No. 2013-21834 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 ██████████. Appellant appeared and testified on her own behalf. ██████████ also testified as a witness for Appellant. ██████████, Appeals Review Officer, represented the Department of Community Health. Adult Services Worker (ASW) ██████████ and Adult Services Supervisor ██████████ from the ██████████ County ██████████ Office appeared as witnesses for the Department.

ISSUE

Did the Department properly deny Appellant's application for 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 osteoarthritis, hypertension, vitamin deficiency, and low back pain. (Respondent's Exhibit A, pages 5, 11, 29).
2. In ██████████, Appellant applied for HHS and her case was opened. (Respondent's Exhibit A, page 10).
3. As part of the initial process, Appellant submitted a medical needs form signed by her doctor. That medical needs form was signed on ██████████ and it indicated that Appellant only has a medical need for assistance with shopping, laundry, and housework. (Respondent's Exhibit A, page 29).
4. On ██████████, ASW ██████████ conducted a visit and assessment in Appellant's home. Appellant and her care provider were present at that

time. (Respondent's Exhibit A, pages 14-15).

5. Based on her assessment and information obtained from Appellant during the home visit, ASW ██████████ determined that Appellant did not meet the criteria for HHS as she did not require any hands on assistance with any Activities of Daily Living (ADLs). (Respondent's Exhibit A, pages 10, 14-15; Testimony of ASW ██████████).
6. On ██████████, the Department issued an Adequate Negative Action Notice to Appellant indicating that Appellant's application was being denied because policy requires that Appellant need hands on assistance with at least one ADL to receive HHS. (Respondent's Exhibit A, pages 7-9).
7. On ██████████, the Department received a Request for Hearing filed by Appellant in this matter. (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 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 (italics added).]

Moreover, ASM 120 states:

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

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 5 (italics added).]

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 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.

The Department found that Appellant has no such need in this case and is therefore ineligible to receive any type of HHS. That decision was based on the information obtained from the medical needs form submitted by Appellant's doctor and from Appellant herself during the home visit. As described above, the medical needs form

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submitted by Appellant's doctor indicated that Appellant only has a medical need for assistance with the IADLs of shopping, laundry, and housework. ASW ██████████ also testified that, during the home visit, Appellant did report that Appellant needs physical assistance with bathing, grooming and dressing. However, ASW ██████████ did not find such a need after observing the Appellant walking, transferring and touching the top of Appellant's head without difficulty and after receiving the medical needs form contradicting Appellant's claims.

In response, Appellant disputes ASW ██████████ testimony regarding the home visit. Appellant testified that she never touched the top of her head and that she only moves around with difficulty. Appellant also testified that she has trouble with her hands, raising her arms, and bending. Overall, Appellant testified that she requires assistance with the ADLs of bathing, dressing, toileting, eating, grooming, mobility, and transferring. According to Appellant, she reported all of those needs to ASW ██████████.

Appellant also testified that the doctor who submitted the medical needs form has been her doctor for over three years and that he should know what she needs. Appellant could not explain why her doctor would write that she only needs assistance with shopping, laundry, and housework.

Appellant further testified that she had foot surgery on ██████████ and that her health has declined since the denial in this case. However, this Administrative Law Judge is limited to reviewing the Department's decision in light of the information available at the time of that decision. Therefore, to the extent Appellant's health has worsened or her needs have changed, those changes are immaterial to this appeal and would have to be raised in a new request to the Department for HHS.

With respect to the decision that is before this Administrative Law Judge, this Administrative Law Judge finds ASW ██████████' testimony credible regarding what occurred during the home visit. That testimony is also supported by her notes taken at the time of the assessment and describing exactly what she was told. ASW ██████████ testimony and findings are further supported by the undisputed fact that Appellant's medical needs form only indicates a need for assistance with IADLs. While the doctor does not dictate what services are provided, it is significant that Appellant's doctor only indicates a limited need for assistance with IADLs in this case.

Appellant bears the burden of proving by a preponderance of the evidence that the Department erred in denying her request for HHS. Here, given ASW ██████████' credible testimony and notes, in addition to Appellant's medical needs form, Appellant has failed to meet that burden and the Department's decision must be affirmed.

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DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly denied Appellant's application for 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: 4/4/2013

***** 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.