

**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. 2013-21951 HHS
Case No. [REDACTED]

[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]. Appellant appeared and testified on her own behalf. [REDACTED] and [REDACTED] also testified as witnesses for Appellant. [REDACTED] Appeals Review Officer, represented the Department of Community Health. Adult Services Worker (ASW) [REDACTED] and Adult Services Supervisor [REDACTED] from the [REDACTED] County DHS-District [REDACTED] 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 [REDACTED]-year-old Medicaid beneficiary who has been diagnosed with Stargardt's disease. Due to her condition, Appellant is legally blind. (Respondent's Exhibit A, pages 8, 13).
2. Appellant applied for HHS and, on [REDACTED] ASW [REDACTED] conducted a visit and assessment in Appellant's home. (Respondent's Exhibit A, page 13; Testimony of [REDACTED]).
3. During that visit, Appellant only reported a need for assistance with housework, laundry, meal preparation, and shopping. (Testimony of Appellant; Testimony of [REDACTED]; Respondent's Exhibit A, page 13).


[REDACTED]

4. Appellant was also walking without the assistance of any person or adaptive equipment during the assessment. (Testimony of Appellant; Testimony of [REDACTED]; Respondent's Exhibit A, page 13).
5. Based on his observations and the information obtained from Appellant during the home visit, ASW [REDACTED] 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). All the assistance Appellant requested was for Instrumental Activities of Daily Living (IADLs). (Respondent's Exhibit A, page 13; Testimony of ASW [REDACTED]).
6. On [REDACTED] the Department issued an Adequate Negative Action Notice to Appellant indicating that Appellant's application was being denied because Appellant did not qualify for the program given her description of her needs. (Respondent's Exhibit A, page 11).
7. On [REDACTED] the Michigan Administrative Hearing System (MAHS) received a Request for Hearing filed by Appellant in this matter. (Respondent's Exhibit A, pages 4-7).
8. On [REDACTED] MAHS sent out notice of a telephone hearing scheduled for [REDACTED]
9. On [REDACTED] Appellant requested an in-person hearing.
10. On [REDACTED] MAHS sent out notice of an in-person hearing scheduled for [REDACTED]
11. The in-person hearing was held on [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 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.

[REDACTED]

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).]

As described in the above policy, 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 HHS for assistance with IADLS as she requested. That decision was based on the information obtained directly from Appellant, who only requested assistance with IADLs during the assessment. Moreover, ASW [REDACTED] also observed Appellant walking without the assistance of any person or adaptive equipment during the assessment. Appellant ASW [REDACTED] also testified during the hearing that she reported being independent with respect to the ADLs of eating, toileting, bathing, grooming, dressing, and transferring during the home visit.

In response, Appellant does not dispute that that she only requested assistance with IADLs, that she was walking unassisted during the home visit, or that she reported being independent in all other ADLS. Instead, Appellant testified that she felt disrespected and mistreated by ASW [REDACTED]. However, this Administrative Law Judge only has jurisdiction to hear matters related to a denial, reduction, termination, or suspension of a Medicaid covered service. See the Code of Federal Regulations: 42 CFR 431.200 *et seq.* and 42 CFR 438.400 *et seq.* To the extent Appellant is generally unhappy with way she was treated, that complaint is not within this Administrative Law Judge's jurisdiction and must be brought in another forum. Appellant did in fact indicate that she has filed a civil rights complaint regarding her alleged mistreatment.

Appellant also testified that she now uses a cane. However, this Administrative Law Judge is limited to reviewing the Department's decision in light of the information it had at the time it made that decision. Here, it is undisputed that Appellant was not using a cane and did not request any assistance with mobility during the assessment. Moreover, even if the later evidence was taken into account, Appellant does not use a pronged cane. With respect to a ranking of "3" in mobility, ASM 121, page 3 of 4,



states: "Without the use of a walker or pronged cane, client would need physical assistance."

Appellant and Stefko also take issue with how HHS are presented by the Department to the public. However, those issues do not affect Appellant's requests or needs in this case and are not material. Moreover, this administrative hearing is not the proper forum for raising general issues regarding the Department's communications with the public. This Administrative Law Judge is limited to reviewing the Department's decision in this case and in light of the applicable policy.

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. Given the undisputed testimony regarding Appellant's request for services and needs for assistance, Appellant has failed to meet that burden. The Department properly found that she has no need for physical assistance with any ADLs and its 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 properly denied Appellant's application for HHS.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

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

Date Signed:

Date Mailed:

***** 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.

[Redacted]

SK/db

cc:

[Redacted]