

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. 2013-25390 HHS

██████████
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 ██████████. Appellant appeared and testified on his own behalf. ██████████, Appeals Review Officer, represented the Department of Community Health. ██████████, Adult Services Worker (ASW), and ██████████, Adult Services Supervisor, also testified as witnesses for the Department.

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 has been diagnosed with low back pain, hip pain, and arthritis in his right hip. (Respondent's Exhibit A, page 17).
2. Appellant has received HHS through the Department and was authorized for ██████ hours and ██████ minutes of HHS per month, with a total monthly care cost of ██████ per month. Specifically, Appellant was authorized for assistance with bathing, dressing, mobility, housework, laundry, shopping, and meal preparation. (Respondent's Exhibit A, pages 20, 22).
3. However, while he was approved for HHS, he has not had an enrolled provider since ██████████ and no payments have been made since that date. (Respondent's Exhibit A, page 20; Testimony of Appellant; Testimony of ██████).

[REDACTED]

4. On [REDACTED], ASW [REDACTED] conducted a home visit and reassessment of Appellant's services. Both Appellant and his new proposed provider were present. (Respondent's Exhibit A, page 15; Testimony of Appellant; Testimony of [REDACTED]).
5. Appellant provided a new medical needs form signed by his doctor prior to the home visit. However, the form has both yes and no checked in response to the question of whether the doctor would certify that Appellant has a medical need for assistance with any of the personal care activities identified on the form. (Respondent's Exhibit B, page 1).
6. ASW [REDACTED] noted the conflicting check marks on the form and concluded that the doctor checked no and Appellant checked yes. (Respondent's Exhibit A, page 15; Testimony of [REDACTED]).
7. The potential provider, Appellant's girlfriend, had been proposed as a provider earlier, in [REDACTED], but had withdrawn and stated that she did not provide any services to Appellant. (Respondent's Exhibit A, page 15; Testimony of Appellant; Testimony of [REDACTED]).
8. During this visit, the potential provider answered the door and took ASW [REDACTED] into the kitchen. She also stated at that time that Appellant was getting dressed in the other room. (Respondent's Exhibit A, page 15; Testimony of [REDACTED]).
9. Appellant later walked into the room unassisted. Appellant reported that he used a cane, but he was not using one at the time and stated that the kids may have lost it. (Respondent's Exhibit A, page 15; Testimony of Appellant; Testimony of [REDACTED]).
10. According to ASW [REDACTED], Appellant also reported that he could bathe himself. The only specific needs for physical assistance he identified were for dressing, housework, laundry, shopping, and meal preparation. (Respondent's Exhibit A, page 15; Testimony of [REDACTED]).
11. According to Appellant, in addition to the other needs he reported, he also informed ASW [REDACTED] that he needs assistance with bathing as he cannot reach his lower extremities. (Testimony of Appellant).
12. On [REDACTED], the Department issued an Advance Negative Action Notice to Appellant indicating that Appellant's HHS would be terminated effective [REDACTED]. The notice of termination also stated Appellant did not have a need for physical assistance with any Activities of Daily Living (ADLs) and that he had not had a provider since [REDACTED]. (Respondent's Exhibit A, page 6).

[REDACTED]

13. On [REDACTED], the Michigan Administrative Hearing System (MAHS) received a Request for Hearing in this matter. (Respondent's Exhibit A, pages 3-8).
14. MAHS subsequently sent out notice of a telephone hearing scheduled for [REDACTED].
15. On [REDACTED], Appellant requested an in person hearing.
16. On [REDACTED], MAHS sent out notice of an in person hearing scheduled for [REDACTED].
17. The in person hearing was held on [REDACTED].
18. Appellant did produce a cane at the hearing, but it was not a pronged cane. (Testimony of Appellant).

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).]

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 at least one 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. In part, that decision was based on the ambiguous medical needs form submitted by Appellant; the fact that Appellant went over four months without having an enrolled provider; and the potential provider's earlier withdrawal and statement that she did not provide any services to Appellant. Moreover, with respect to the specific ADLs that Appellant had been receiving HHS for in the past,

[REDACTED]

ASW [REDACTED] observed Appellant walking without any physical assistance or the assistance of any adaptive equipment; Appellant reported that he could bathe himself; and Appellant's provider reported that Appellant was dressing himself in the other room when the worker arrived.

In response, Appellant testified that he did not alter medical needs form and that, while he did not have an enrolled provider, other people, including his girlfriend/potential provider, have been assisting him the entire time. Appellant also testified that his girlfriend had only withdrawn and stated she did not provide services earlier because they had been in a fight. Appellant further testified that he reported a need for bathing assistance and cannot bathe his lower extremities on his own. Regarding the ADL of dressing, Appellant testified that he needs some help with dressing and that his provider misspoke during the home visit as she had helped him get dressed that day and he may have just been putting a shirt on. Appellant concedes that he was walking unassisted during the home visit, but also testified that he does use a cane most of the time.

Appellant bears the burden of proving by a preponderance of the evidence that the Department erred in terminating his HHS. 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 that decision. Here, Appellant testified that still requires assistance with the three ADLs he was previously receiving HHS for. However, given the evidence in this case, the Department properly found that he does not require assistance with any ADLs at a level 3 or higher.

For example, with respect to mobility, it is undisputed that Appellant was not using a cane and was walking unassisted during the assessment. Moreover, even if the later evidence that Appellant now uses a cane 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." (Emphasis added).

The other two ADLs in dispute, *i.e.* dressing and bathing, turn more on a determination of credibility. Appellant testified that he reported a need for assistance in both tasks to ASW [REDACTED] and that he does have such needs. ASW [REDACTED], on the other hand, testified that Appellant reported that he was independent in bathing and that his potential provider stated that Appellant was dressing himself when the worker arrived. According to Appellant, his provider misspoke and that she had assisted him in getting dressed earlier, though he may have been putting a shirt on.

Overall, this Administrative Law Judge finds ASW [REDACTED] notes and testimony to be more credible than Appellant's testimony. The problematic medical needs form; the potential provider's statements, both in the past regarding a lack of services and during the home visit regarding Appellant getting dressed; and the fact that Appellant went so long without an enrolled provider all weigh against his credibility. Each piece of evidence may not be dispositive on its own, but together, along with ASW [REDACTED] credible testimony, the evidence leads this Administrative Law Judge to find that

[REDACTED]

Appellant did not qualify for HHS with respect to bathing or dressing as he did not have a need for assistance with those ADLs.

Appellant has therefore failed to meet his burden of proof and the Department properly found that he does not require assistance with any ADLs at level 3 or greater. Accordingly, the decision to terminate his HHS 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 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

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

***** 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.

SK/db

cc: [REDACTED]