

**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. 2013-27133 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]. Nedhal Hindo appeared and testified on Appellant's behalf. Appellant, [REDACTED], Appellant's wife; and [REDACTED], Appellant's son; also testified as witnesses for Appellant. [REDACTED], Appeals Review Officer, represented the Department of Community Health. Adult Services Worker (ASW) [REDACTED] from [REDACTED] appeared as a witness 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 [REDACTED] year-old man who has been diagnosed by a doctor with hypertension and cardio myopathy. Appellant also reports allergies, shortness of breath, dizziness, constipation, and difficulties bending. (Respondent's Exhibit A, pages 8, 13).
2. Appellant had been receiving HHS in the amount of 14 hours and 2 minutes a month, with a total monthly care cost of \$[REDACTED]. Specifically, services were authorized for assistance with the tasks of housework, laundry, shopping, and meal preparation. (Respondent's Exhibit A, page 10).
3. On [REDACTED], ASW [REDACTED] held a meeting with Appellant, Appellant's wife, and Appellant's son/provider regarding the HHS Appellant was receiving.

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She first spoke with Appellant and his wife, through a translator, and then interviewed Appellant's son. Both Appellant and his son reported that Appellant only required assistance with housework, laundry, shopping, and meal preparation. (Respondent's Exhibit A, page 11; Testimony of ██████████; Testimony of ██████████).

4. The tasks of housework, laundry, shopping, and meal preparation are all identified as Instrumental Activities of Daily Living (IADLs) by the Department. (Adult Services Manual 101 (11-1-2011) (hereinafter "ASM 101"), page 1 of 4).
5. Based on those reports, ASW ██████████ decided to terminate Appellant's HHS. On ██████████, the Department issued an Advance Negative Action Notice to Appellant indicating that Appellant's HHS would be terminated effective ██████████ because Appellant did not have a need for physical assistance with any Activities of Daily Living (ADLs), which is required by policy in order to receive any HHS. (Respondent's Exhibit A, pages 6, 11-12).
6. However, while HHS payments were stopped as scheduled on ██████████, Appellant's case was not closed. According to both parties, ASW ██████████ agreed to reassess the termination of services if Appellant could provide a DHS 54-A Medical Needs Form stating that he had a need for physical assistance with at least one ADL. (Testimony of ██████████; Testimony of ██████████; Testimony of ██████████).
7. Appellant also appealed the termination of services. However, on the day of the hearing, the appeal was withdrawn after the parties again agreed that the termination would be reassessed if Appellant could provide a medical needs form stating that he had a need for physical assistance with at least one ADL. (Testimony of ██████████; Testimony of ██████████).
8. Appellant did provide a letter from his doctor, dated ██████████, in which his doctor briefly described some of Appellant's medical conditions. However, the letter was not a DHS 54-A Medical Needs Form and did not state that Appellant had a need for physical assistance with at least one ADL. (Respondent's Exhibit A, page 5; Testimony of ██████████).
9. On or about ██████████, ASW ██████████ provided another blank DHS 54-A Medical Needs Form to Appellant. (Testimony of ██████████; Testimony of ██████████).
10. That form appears to have been completed and signed by Appellant's physician on ██████████. However, in the section regarding personal care activities, the doctor only circled the Instrumental Activities of Daily Living (IADLs) of housework, laundry, shopping, and meal

preparation. (Respondent's Exhibit A, page 13).

11. According to ASW ██████████, she never received a completed medical needs form by ██████████. (Testimony of ██████████).
12. On that same date, she sent out an Advance Negative Action Notice to Appellant indicating that Appellant's HHS would be terminated effective ██████████ because the "Medical Needs form certifying your need for hands-on assistance, that was mailed out in ██████████, was not returned to the local DHS office." (Respondent's Exhibit A, pages 6-7).
13. According to Appellant's son, while he could not remember the exact dates he submitted the medical needs form, he had ensured that the doctor's office faxed it over and he also personally dropped off the form at the DHS office. (Testimony of ██████████).
14. On ██████████, the Michigan Administrative Hearing System (MAHS) received a Request for Hearing regarding the second notice of termination. (Respondent's Exhibit A, pages 4-5).
15. MAHS subsequently sent out notice of a telephone hearing scheduled for ██████████.
16. However, the hearing was not held on ██████████ because Appellant had requested an in-person hearing.
17. On ██████████, MAHS sent out notice of an in person hearing scheduled for ██████████.
18. The in-person hearing was held on ██████████.

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.

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. Here, in ██████████, the Department found that Appellant had no such need in this case and was therefore ineligible to receive HHS for assistance with IADLS as he requested. That decision was based on the information obtained directly from Appellant and his son.

The Department subsequently sent of written notice of its determination and the termination of Appellant's HHS. However, as described above, it did not close out Appellant's case and ASW ██████ agreed to reassess the termination of services if Appellant could provide a DHS 54-A Medical Needs Form stating that he had a need for physical assistance with at least one ADL. Similarly, Appellant withdrew his appeal of the termination of services after a similar agreement was reached.

According to the Department, it did not receive a medical needs form by ██████████ and, on that date, it issued another Advance Negative Action Notice to Appellant indicating that Appellant's HHS would be terminated effective ██████████ because it had not received a medical needs form stating that he had a need for physical assistance with at least one ADL. Appellant, on the other hand, asserts that a medical needs form was submitted in ██████████.

Appellant bears the burden of proving by a preponderance of the evidence that the Department erred in terminating his HHS. Given the testimony and evidence in this case, Appellant has failed to meet that burden. This Administrative Law Judge finds ASW ██████ credible with respect to her testimony that she did not receive the new medical needs form prior to the second notice of termination.

Moreover, even assuming that Appellant's son's testimony is correct and that the medical needs form was submitted prior to the termination, that medical needs form did not satisfy the agreement the parties had reached because it only identified Appellant as needing assistance with IADLs. Additionally, Appellant's witnesses confirmed during the hearing that Appellant only has a need for assistance with IADLs. Accordingly, even if the medical needs form was timely submitted it did not justify a reassessment of the


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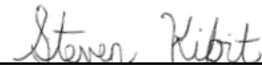
earlier, proper termination of services and Appellant clearly does not meet the criteria for HHS.

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


Date Signed: 6/12/2013

Date Mailed: 6/12/2013

cc:



***** 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.