

**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. 2013-32227 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. ██████████, Appellant's case manager, also testified as a witness for Appellant. ██████████, Appeals Review Officer, represented the Department of Community Health. Adult Services Worker (ASW) ██████████, from the ██████████ County DHS Office, appeared as a witness 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 woman who has been diagnosed with anxiety, depression, asthma, and thyroidism. (Respondent's Exhibit A, page 7).
2. On ██████████, Appellant was referred for HHS. (Respondent's Exhibit A, page 6).
3. As part of her application, Appellant submitted a medical needs form signed by her doctor. That form indicated that Appellant only has a medical need for assistance with meal preparation, shopping, laundry, and housework. (Respondent's Exhibit A, page 5).
4. On ██████████, ASW ██████████ conducted a visit and assessment in Appellant's home. (Respondent's Exhibit A, pages 12-13).

5. During that visit, ASW ██████████ observed Appellant moving and transferring without any assistance, albeit slowly. Appellant did report using a cane outside of her home, but was not using one during the assessment and could not produce one. Appellant also reported that, while she gets in-and-out of the bathtub by herself, she is worried that she will fall while doing so. (Respondent's Exhibit A, pages 12-13; Testimony of Appellant).
6. Based on the medical needs form, Appellant's statements, and her own observations 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, page 6).
7. On ██████████, the Department issued an Adequate Negative Action Notice to Appellant indicating that Appellant's application was being denied because Appellant did not have a need for hands-on assistance with any ADLs. (Respondent's Exhibit A, pages 8-11).
8. On ██████████, the Michigan Administrative Hearing System (MAHS) received a Request for Hearing filed by Appellant in this matter. (Respondent's Exhibit A, page 4).

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.

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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 if she 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 for assistance with IADLS as she requested. That decision was based on the information obtained directly from Appellant and her doctor. The medical needs form submitted by Appellant's doctor indicated that Appellant only has a medical need for assistance with the IADLS of meal preparation, shopping, laundry, and housework. Similarly, Appellant only requested assistance with IADLS during the assessment. ASW [REDACTED] further observed Appellant walking and transferring without the assistance of any person or adaptive equipment.

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, since the denial of her application, she has fallen while getting into the bathtub and now needs assistance with ADLs. 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 did not require any assistance with any ADLs at a level 3 or greater at the time of the denial.

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. To the extent her circumstances have changed, Appellant is free to re-apply for HHS.

[REDACTED]
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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

[REDACTED]
Date Signed: May 17, 2013

Date Mailed: 5/17/2013

cc:

[REDACTED]
[REDACTED]
Susan Yontz
[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.