

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

P.O. Box 30763, Lansing, MI 48909
(517) 335-2484; Fax: (517) 373-4147

IN THE MATTER OF:

██████████

Appellant.

Docket No. 2013-3243 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 his own behalf. ██████████, Appeals Review Officer, represented the Department of Community Health. ██████████, Adult Services Supervisor, and ██████████, Adult Services Worker (ASW), from the Wayne County DHS-District 45 Office appeared 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 end-stage renal disease and hypertension. (Respondent's Exhibit A, page 10).
2. Appellant had been receiving HHS in the amount of 36 hours and 16 minutes per month, with a total care cost of \$██████ per month. (Respondent's Exhibit A, page 12).
3. Specifically, Appellant was authorized for assistance with the Instrumental Activities of Daily Living ("IADLs") of housework, laundry, shopping, and meal preparation. (Respondent's Exhibit A, page 11).
4. No assistance was authorized for any Activities of Daily Living ("ADLs"). (Respondent's Exhibit A, page 11).

██████████
Docket No. 2013-3243 HHS
Decision and Order

5. On ██████████, the Department sent Appellant written notice that it was terminating his HHS because he had not met his Medicaid spend-down since ██████████. The termination was to be effective ██████████. (Respondent's Exhibit A, pages 5-6).
6. However, on ██████████, the Department sent Appellant a written notice that his HHS was going to be terminated effective ██████████ based on new policy which requires the need for hands-on services with at least one ADL in order to receive HHS. (Respondent's Exhibit A, pages 7-8).
7. On ██████████, the Department received a Request for Hearing filed by Appellant. (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**

Docket No. 2013-3243 HHS
Decision and Order

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.

**Docket No. 2013-3243 HHS
Decision and Order**

Example: Ms. Smith is assessed at a level 4 for bathing however she refuses to receive assistance. [REDACTED] 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].

Moreover, ASM 120 states:

Functional Assessment

The **Functional Assessment** module of the **ASCAP** comprehensive assessment is the basis for service planning and for the Home Help Services 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.

██████████
Docket No. 2013-3243 HHS
Decision and Order

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. ██████████ 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 6.]

Appellant bears the burden of proving by a preponderance of the evidence that the Department erred in terminating his services. Here, Appellant has failed to meet that burden and the Department's decision must be affirmed.

As a preliminary matter, this Administrative Law Judge would note that the Department offered two reasons for the termination:

1. Appellant had not met his Medicaid spend-down since ██████████, and
2. Appellant did not require any assistance with ADLS and a new policy required the need for hands-on services with at least one ADL in order to receive HHS.

Docket No. 2013-3243 HHS
Decision and Order

However, Appellant denies having a spend-down and the Department offered no evidence of any spend-down or failure to meet any spend-down. The ASW assigned to the case also could not recall any information regarding a spend-down and it appears that Appellant was receiving HHS during the time the Department asserts he was not meeting his spend-down. Accordingly, the first basis offered by the Department for the termination must be rejected.

Nevertheless, the Department's decision must still be affirmed because Appellant did not and does not require any assistance with ADLS. In the past, Appellant has been authorized for HHS and has received assistance with the tasks of housework, laundry, shopping, and meal preparation. However, as described above, those tasks are all considered IADLs and an individual must be assessed as having a need for assistance with at least one ADL in order to be eligible to receive HHS. (ASM 101, page 2 of 4; ASM 120, page 3 of 6).

Given the above evidence, there was no basis at the time of the termination for authorizing any assistance with ADLs and, consequently, the Department properly terminated Appellant's assistance with IADLs in accordance with policy.

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**.

/s/

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

cc:



Date Mailed: January 25, 2013

Rutherford, Willie
Docket No. 2013-3243 HHS
Decision and Order

***** 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 March 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.