

**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. 2013-6058 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]. Attorney [REDACTED] represented Appellant during the hearing. Appellant appeared as a witness on her own behalf. [REDACTED], Appeals Review Officer, represented the Department of Community Health. [REDACTED], an Adult Services Specialist at the [REDACTED] County DHS Office, appeared as a witness for the Department.

Following the hearing, the record was left open until [REDACTED] at the request of Appellant's representative.

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 woman who has been diagnosed with chronic back pain, insomnia, chronic sciatica lumbar, spina bifida, anxiety, migraines, degenerative disc disease, and septic ulcers. (Respondent's Exhibit A, page 13).
2. The Social Security Administration has determined that Appellant has been disabled, as that term is defined by the Social Security Act, since [REDACTED] and Appellant has been receiving Social Security Income (SSI) payments since [REDACTED]. (Petitioner's Exhibit 1, pages 1-6; Petitioner's Exhibit 2, pages 1-2).

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3. On [REDACTED], Appellant was referred for HHS. (Respondent's Exhibit A, page 15).
4. 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).
5. On [REDACTED], [REDACTED] conducted a visit and assessment in Appellant's home. (Respondent's Exhibit A, page 12).
6. Based on the medical needs form, Appellant's statements, and her own observations during the home visit, [REDACTED] determined that Appellant did not meet the criteria for HHS as Appellant's assessment did not require any hands on assistance with any Activities of Daily Living (ADLs). (Respondent's Exhibit A, pages 4-5, 8-11).
7. On [REDACTED], 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 [REDACTED], the Michigan Administrative Hearing System (MAHS) received a Request for Hearing filed by Appellant in this matter.
9. However the request for hearing was not signed by Appellant. Accordingly, in a letter dated [REDACTED], MAHS informed Appellant that it could not schedule a hearing because Appellant's signature was not on the request and there was no documentation stating that Appellant had a legal guardian. Appellant was advised to sign and return the form within 30 days.
10. On [REDACTED], MAHS received a request for hearing signed by Appellant. (Respondent's Exhibit A, pages 3-6).

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.

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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 in general or HHS for assistance with an IADL specifically if he or she 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 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 House further observed Appellant walking and transferring without the assistance of any person or adaptive equipment during the assessment.

In response, Appellant's representative notes that Appellant has subsequently been approved for HHS, with a start date of [REDACTED], and argues that Appellant's ongoing medical conditions and needs would have been present at the time of the denial in this case as well. Appellant also testified that, while she only requested assistance with IADLs during the home visit, she does have difficulties with mobility and has to use a cane. Appellant further testified that she does not always use a cane when indoors and, instead, can move around with the assistance of walls, furniture, etc. According to Appellant, she can stand for 5-10 minutes without a cane, but did not retrieve any medications on her own as testified to by the ASW.

This Administrative Law Judge only has jurisdiction to hear matters related to a denial; reduction; termination; or suspension of a Medicaid covered service; and must review

that negative action in light of the information the Department had at the time it made its decision. Accordingly, whatever changes have happened in Appellant's case or new information that is been provided since the denial are immaterial to this review of the Department's decision.

Moreover, with respect to the decision that is before this Administrative Law Judge, Appellant bears the burden of proving by a preponderance of the evidence that the Department erred in denying her request for HHS.

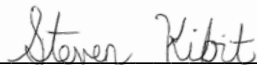
Given the undisputed testimony regarding Appellant's request for services and the medial needs form submitted along with her request for HHS; Appellant has failed to meet that burden. Appellant's doctor only indicated a need for and Appellant only requested assistance with IADLs. As provided in policy, even if Appellant has a need for such assistance, she is not eligible for HHS unless she also has a need for assistance with at least one ADL at a level 3 or greater. The Department properly found that she has no such need for physical assistance with any ADLs, based on the information supplied by Appellant at the time of the denial, 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: May 20, 2013

Date Mailed: 5/21/2013

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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 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.