

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

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IN THE MATTER OF:

██████████,

Appellant.

Docket No. 2013-10229 HHS¹
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's ██████████ appeared and testified on Appellant's behalf. Appellant also 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 authorize the proper amount of 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, per his HHS file, has been diagnosed with lumbar disc disease and chronic pain syndrome. (Respondent's Exhibit A, pages 13, 35). Appellant and his representative also testified that Appellant also suffers from diabetes, asthma, arthritis, eye problems, and knee problems. (Testimony of Appellant; Testimony of Appellant's Representative).

¹This case was originally coded as a Home Help Provider (HHP), but, during the hearing, it became clear that Appellant is the recipient of HHS and that it is his services at issue. Accordingly, this matter was therefore recoded as a Home Help Services case (HHS).

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2. Appellant applied for HHS and, as part of his application, submitted a medical needs form signed by [REDACTED] in [REDACTED]. (Respondent's Exhibit A, page 32).
3. In that medical needs form, [REDACTED] indicated that Appellant only has a medical need for assistance with meal preparation, shopping, laundry and housework. (Respondent's Exhibit A, page 32).
4. On [REDACTED], ASW [REDACTED] also conducted a home visit as part of the initial assessment. (Respondent's Exhibit A, pages 15-16).
5. On [REDACTED], the Department sent Appellant a Services and Payment Approval Notice stating that, effective [REDACTED], Appellant was approved for 15 hours and 11 minutes of HHS per month, with a total monthly care cost of \$ [REDACTED] (Respondent's Exhibit A, pages 10-13).
6. Specifically, Appellant was approved for assistance with the tasks of bathing, housework, laundry, shopping, and meal preparation. (Respondent's Exhibit A, page 17).
7. As Appellant lives in a shared household with another adult, the assistance authorized with housework, laundry, shopping, and meal preparation was prorated by one-half per policy. (Testimony of ASW [REDACTED])
8. Appellant telephoned ASW [REDACTED] on or about [REDACTED] and reported that he required greater assistance than what was authorized, including assistance with tasks such as grooming, transferring and dressing. (Testimony of Appellant; Testimony of ASW [REDACTED])
9. In response, ASW [REDACTED] informed Appellant that she would authorize assistance with those tasks if Appellant could provide an updated medical needs form indicating that he required assistance with those tasks. (Testimony of Appellant; Testimony of ASW [REDACTED])
10. Appellant never provided an updated medical needs form. (Testimony of Appellant; Testimony of Appellant's representative; Testimony of ASW [REDACTED])
11. On [REDACTED], the Department received a Request for Hearing filed by Appellant. (Respondent's Exhibit A, pages 5-9).

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.

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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: [REDACTED] 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.

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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: ██████████ 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 6.]

Appellant bears the burden of proving by a preponderance of the evidence that the Department erred in the amount of services it authorized. 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 the decision.

This case turns on the information the Department had at the time it made its decision. According to ASW ██████████ both Appellant and his provider ██████████ were present during the visit and they reported that ██████████ only worked 2 to 3 days a week with Appellant. ASW ██████████ also testified that both Appellant and his provider told her that Appellant only required hands-on, physical assistance with the tasks of bathing, housework, laundry, meal preparation, and shopping. She subsequently authorized assistance with those tasks. ASW ██████████ further testified that Appellant was ambulating without difficulty during the home visit and that, while she does not specifically remember him failing to report that he suffers from diabetes, she would have written down that condition if he had and she did not write it down in this case.

On the other hand, according to Appellant, he needs a much greater amount of assistance and he and ██████████ reported a greater amount of needs during the home visit. Appellant testified that, in addition to the tasks identified by ASW ██████████ he also needs assistance with dressing, transferring, mobility, taking his medications, toileting, and transportation. Appellant further testified that he needs assistance with most of those tasks everyday and that ██████████ assists him everyday. Appellant and his representative also testified that Appellant also suffers from diabetes, asthma, arthritis, eye problems and knee problems, and that he reported those diagnoses during the home visit. According to Appellant, he also needs a walker to ambulate and that he was using the walker when ASW ██████████ assessed him.

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Appellant and ASW ██████████ therefore testified to two completely different versions of what needs Appellant reported during the home visit and what information the Department had at the time it made its decision regarding Appellant's needs. The only other person present during that visit, Appellant's care provider, did not testify during the hearing.

However, the Department also had the medical needs form submitted by Appellant and that the medical needs form submitted by Appellant supports ASW ██████████ testimony in that it indicates that Appellant only has a medical need for assistance with meal preparation, shopping, laundry and housework. Appellant and his representative assert that ██████████ was unaware of all of Appellant's needs, but Appellant was the one who provided that medical needs form and the Department is justified in relying upon it. As discussed above, the Department also gave Appellant an opportunity to submit an updated medical needs form, but he failed to do so.

Given that medical needs form, in addition to the detailed notes taken by ASW ██████████ at the time of the home visit, this Administrative Law Judge finds ASW ██████████ to be more credible than Appellant with respect to what she was told during the home visit. Moreover, given that credible testimony and the medical needs form, this Administrative Law Judge finds that Appellant has failed to meet his burden of proving by a preponderance of the evidence that the Department erred in the amount of services it authorized. Accordingly, the Department's 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 authorized the proper amount of 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

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cc:



Date Mailed: February 25, 2013

***** 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.