

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

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IN THE MATTER OF:

Docket No. 2013-17376 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 C.F.R. § 431.200 *et seq.*, upon the Appellant's request for a hearing.

After due notice, a hearing was held on [REDACTED]. Appellant [REDACTED] appeared and testified on his own behalf. [REDACTED], Appeals Review Officer, represented the Department of Community Health. [REDACTED], Adult Services Worker (ASW) from the Macomb County DHS Office, appeared as a witness for the Department. [REDACTED] Adult Services Supervisor was also present but did not testify.

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 Medicaid beneficiary who had been receiving HHS. (Testimony).
2. Appellant has been diagnosed by a physician with coronary artery disease, sleep apnea, Type II diabetes, and lumbar displacement. (Exhibit A, p. 6).
3. On [REDACTED], Appellant's physician completed a DHS-54A indicating that Appellant had a medical need for assistance with taking medications, meal preparation, shopping, laundry, and housework. (Exhibit B and testimony).

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4. On [REDACTED], [REDACTED], ASW, did a home visit with the Appellant and did a face-to-face assessment to determine Appellant's continued eligibility for HHS. The ASW determined that Appellant did not meet the criteria for HHS as he did not need assistance with any of his ADLs. (Exhibit A, pp. 10-11 and testimony).
5. On [REDACTED], the Department issued an Advance Action Notice to Appellant informing him that his HHS would be terminated based on the fact that the Appellant did not demonstrate a need for hands on assistance with any of his activities daily living (ADLs). (Exhibit A, pp. 7-9 and testimony).
6. On [REDACTED], MAHS received Appellant's Request for Hearing. (Exhibit A, p. 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 (11-1-2011) (hereinafter "ASM 120") address the issues of what services are included in Home Help Services and how such services are assessed:

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.

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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)

Services not Covered by Home Help Services

Home help services must **not** be approved for the following:

- Supervising, monitoring, reminding, guiding of encouraging (functional assessment rank 2);

(ASM 101, page 3 of 4)

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

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Functional Scale

ADL's and IADL's 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 6)

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ASW [REDACTED] stated she conducted an in-home assessment with the Appellant on [REDACTED]. She stated she sent out an Advance Negative Action Notice to the Appellant on [REDACTED] stating that his HHS would be terminated effective [REDACTED], as the in-home assessment did not identify a need for hands on assistance with an Activity of Daily Living. (See Exhibit A, pp. 7-9). The ASW also noted that the DHS-54A medical needs form completed by the Appellant's doctor on [REDACTED] did not indicate that the Appellant had a medical need for assistance with any of his ADLs, only his IADLs including taking medications, meal preparation, shopping, laundry, and housework. (See Exhibit B).

The ASW stated when she went to Appellant's trailer for the assessment; he opened the door for her. She stated the Appellant was new to [REDACTED] that he had transferred from [REDACTED]. The ASW's testimony and her notes from the assessment stated the Appellant was able to walk into his home without assistance using a cane. She stated she observed the Appellant bend over and pick up his dog. He had no trouble sitting down in a chair or standing up without assistance. The ASW stated the Appellant was able to open the door and put his [REDACTED] on a leash. Appellant also had a conversation with someone on his speaker phone that prompted the ASW to ask the Appellant if the car parked outside was his and did he drive. Appellant acknowledged that he drives just a little bit.

The ASW stated she asked the Appellant what he needed help with and he indicated he needed help with everything. Appellant stated he needed help with his zipper. He also told her that he needed help washing his back. The ASW stated when she asked if he could use a back brush to scrub his back, he said he hadn't thought of it. Appellant told the ASW he would eat cookies and heated up prepared foods in the microwave when his [REDACTED] wasn't there to cook for him. Appellant also told the ASW that he is supposed to check his blood sugar everyday, and if necessary he will go to the refrigerator and get out his insulin and give himself an injection in his stomach.

The ASW reported that the Appellant demonstrated his ability to walk, bend over, open doors, and he acknowledged that he could give himself insulin shots, which would require the use of two hands. Appellant also advised the ASW that he could drive. She found no clear or obvious medical issues which demonstrated that the Appellant needed hands on assistance with any of his ADLs.

The ASW referenced the policy from the Adult Services Manual, ASM 120, which states that an individual must be assessed with at least One Activity of Daily Living (ADL) in order to be eligible to receive Home Help Services. The ASW stated based on her own observations during the assessment, the information the Appellant provided, and the doctor's medical needs form, she would rank the Appellant independent in all of his ADLs. The ASW stated that she believed that termination of Appellant's HHS was appropriate and that is was in accordance with the policy found in the Adult Services Manual.

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During the hearing, Appellant indicated he has had four heart attacks, he is blind in the right eye, and only has 50% vision in the other eye. Appellant indicated he has problems with diabetes and high blood pressure. He also indicated he had three surgeries in his right hand and can't do anything with it. Appellant indicated that the ASW only saw him one time and she decided he did not need any help, when in fact he has had help for the last ten years. Appellant stated he believes that the ASW had a problem with him before she ever met him.

Appellant acknowledged that he drove to the administrative hearing, and was able to walk to the hearing room without assistance. When questioned Appellant admitted that he could feed himself and brush his teeth using his left hand. He was able to use the bathroom on his own. He stated he could do everything with his left hand. Appellant claimed that he needed help with cooking, with bathing, and that someone helps him with these things. Appellant claimed that he told the ASW he could not dress or bathe himself.

The preponderance of reliable evidence in this case demonstrates that the Appellant does not need assistance with any of his ADLs. Appellant did claim he needed help with some of his ADLs, but the observations of the ASW and the medical needs form from Appellant's doctor contradict his testimony in this regard. According to the policy quoted above, an individual is only eligible to receive HHS if he or she has a need for assistance with an ADL at a level 3 or greater. See ASM 101, page 2 of 4; ASM 120, page 3 of 6. Appellant has no such need and is therefore ineligible to receive any type of HHS. Accordingly, the Department's decision must be sustained.

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/

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

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cc:



Date Mailed: February 14, 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 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.