

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. 2013-34817 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's mother, appeared and testified on Appellant's behalf. Appellant and ██████████, a representative from the agency that provides Appellant's home help providers, were also present during the hearing. ██████████, Appeals Review Officer, represented the Department of Community Health. Adult Services Worker (ASW) ██████████ and Adult Services Supervisor ██████████ from ██████████ County DHS appeared as witnesses 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 mild mental retardation. (Respondent's Exhibit A, page 20).
2. On ██████████, Appellant was referred for HHS. (Respondent's Exhibit A, page 18).
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 taking medications, meal preparation,

- shopping, laundry, and housework. (Respondent's Exhibit A, page 33; Testimony of ASW ██████████).
4. On ██████████, the Department sent Appellant written notice that her request for HHS would be denied on ██████████ as she had been unavailable for the scheduled ██████████ home visit and reassessment. (Respondent's Exhibit A, page 5).
 5. The notice also advised Appellant to contact the Department by ██████████ ██████████ in order to schedule another appointment and avoid her application being denied. (Respondent's Exhibit A, page 5).
 6. Appellant contacted the Department prior to the effective date of the denial. The denial was then rescinded and a home visit/comprehensive assessment scheduled. (Respondent's Exhibit A, pages 10-15).
 7. On ██████████, ASW ██████████ conducted a visit and assessment in Appellant's home. (Respondent's Exhibit A, pages 16-17).
 8. During that visit, Appellant reported being that she could perform her own Activities of Daily Living (ADLs) and most of her own Instrumental Activities of Daily Living (IADLs). (Respondent's Exhibit A, page 16; Testimony of Appellant's representative; Testimony of ██████████).
 9. However, her mother stated that Appellant could not perform any IADLs as reported. Appellant's mother also stated that she needs to monitor Appellant's bathing and dressing in order to ensure that they are done properly. (Respondent's Exhibit A, page 16; Testimony of Appellant's representative; Testimony of ██████████).
 10. Based on the medical needs form; the statements made during the home visit; and her own observations; ASW ██████████ determined that, while Appellant requires assistance with IADLs, Appellant did not meet the criteria for HHS as she did not require any hands-on assistance with any ADLs. (Respondent's Exhibit A, pages 16-17; Testimony of ASW ██████████).
 11. On ██████████, the Department sent written notice to Appellant indicating that her application for HHS was being denied because Appellant did not have a need for hands-on physical assistance with any ADLs. (Respondent's Exhibit A, pages 5-7).
 12. On ██████████, the Michigan Administrative Hearing System (MAHS) received a Request for Hearing filed by Appellant in this matter. (Respondent's Exhibit A, pages 2-3).

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.

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 for assistance with an IADL if he or she also 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 HHS for assistance with IADLS as she requested. That decision was based on the information obtained directly from Appellant, her mother, 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 taking medication, meal preparation, shopping, laundry, and housework. Similarly, Appellant only requested assistance with IADLs during the assessment. Her mother did indicate a need for assistance with ADLs such as bathing and dressing. However, the assistance

she described was limited to monitoring and supervision, and therefore does not rise to the level required for HHS.

In response, Appellant's representative does not dispute that the medical needs form only indicates a need for assistance with IADLs or that Appellant only reported being independent in all ADLs during the home visit. Instead, Appellant's representative testified that Appellant is unaware of her own limitations and claims to do more than she can. Appellant's representative also testified that she assists Appellant with bathing, by running water; grooming, by preparing Appellant's hair; and dressing, by helping Appellant pick out clothes.

However, not all of the assistance described by Appellant's representative constitutes direct physical assistance that would justify HHS. ASW ██████████ also credibly testified that Appellant's representative did not report during the home visit that Appellant required any physical assistance with ADLs. Moreover, Appellant's representative could not explain why Appellant's doctor, who knows Appellant well, would only list a need for assistance with IADLs on the medical needs form.

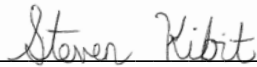
Appellant bears the burden of proving by a preponderance of the evidence that the Department erred in terminating her HHS. Given the testimony and evidence regarding Appellant's request for services and need for assistance, Appellant has failed to meet that burden. The Department properly found that she has no need for physical assistance with any ADLs and its decision to deny services on that basis 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 request 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

**Docket No. 2013-34817 HHS
Decision and Order**

Date Signed: 6/6/2013

Date Mailed: 6/6/2013

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 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.