

**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. 2013-36687 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 care provider, appeared and testified on Appellant's behalf. Appellant also testified on her own behalf. ██████████, Appeals Review Officer, represented the Department of Community Health. ██████████, Adult Services Worker (ASW), and ██████████, Adult Services Supervisor, from the ██████████ DHS-██████████ office 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 Medicaid beneficiary who has been diagnosed with diabetes; hypertension; and rheumatoid arthritis. (Respondent's Exhibit A, page 21).
2. On ██████████, Appellant was referred for HHS. (Respondent's Exhibit A, page 19).
3. As part of her application, Appellant submitted a medical needs form signed by her doctor. (Respondent's Exhibit A, page 18; Testimony of ASW ██████████).
4. That form indicated that Appellant has a medical need for assistance with the tasks of laundry, housework, and meal preparation. (Respondent's Exhibit A, page 18; Testimony of ASW ██████████).

██████████
Docket No. 2013-36687 HHS
Decision and Order

5. The tasks of laundry, housework and meal preparation are all identified as Instrumental Activities of Daily Living (IADLs) by the Department. (Adult Services Manual 101 (11-1-2011) (hereinafter "ASM 101"), page 1 of 4).
6. On ██████████, ASW ██████████ conducted a visit and assessment in Appellant's home with Appellant and Appellant's provider. (Respondent's Exhibit A, page 18).
7. During that visit, Appellant and her provider reported that, among other assistance, Appellant needs her provider's assistance in getting in-and-out of the bathtub. (Respondent's Exhibit A, page 18; Testimony of ASW ██████████).
8. The task of bathing is identified as an Activity of Daily Living (ADL) by the Department. (ASM 101, page 1 of 4)
9. Following that visit, ASW ██████████ ranked Appellant a "3" for the tasks of bathing, laundry, housework, and shopping. (Respondent's Exhibit A, page 22).
10. She also generated a time and task sheet for HHS services. Per that sheet, Appellant was to receive 9 hours and 1 minute of HHS per month, with a total monthly care cost of \$██████████. Assistance was to be provided with bathing, laundry, housework, and shopping. (Respondent's Exhibit A, page 23).
11. However, on ██████████, the Department sent written notice to Appellant indicating that her application for HHS was being denied. The reason given in the notice was: "IADLs only". (Respondent's Exhibit A, page 4).
12. On ██████████, the Michigan Administrative Hearing System (MAHS) received a Request for Hearing in this matter. (Respondent's Exhibit A, pages 3-4).
13. A hearing was scheduled for ██████████ before Administrative Law Judge ██████████.
14. Appellant was unable to attend the hearing and, on the day of the hearing, telephoned in to request an adjournment,
15. ██████████ granted that request and the matter was rescheduled for ██████████.
16. On or about ██████████, the Department requested that the rescheduled hearing be adjourned due to the unavailability of its witness.
17. That adjournment request was also granted and the matter was

rescheduled for ██████████.

18. The hearing was held on ██████████.

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.

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 if he or she has a need for assistance with at least one ADL at a level 3 or greater.

Here, the Department denied Appellant's application on the basis that she only required assistance with IADLs.

However, prior to that denial, ASW ██████████ had expressly ranked Appellant as a "3" for the ADL of bathing and included bathing assistance as part of the time and task sheet she generated. During the hearing, ASW ██████████ confirmed that she had ranked Appellant a "3" in the ADL of bathing based on reports from Appellant and her provider that Appellant needs assistance getting in-and-out of the bathtub. Similarly, Appellant and her provider confirmed that the provider physically assists Appellant with the task of bathing by helping her in-and-out of the bathtub.

ASW ██████████ could not explain why services were denied even though she had ranked Appellant a "3" in bathing and found that Appellant required physical assistance with that ADL.


Docket No. 2013-36687 HHS
Decision and Order

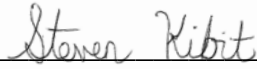
Given that the ASW had specifically determined that Appellant needs assistance with the ADL of bathing at a level 3 or greater, the Department improperly denied Appellant's application on the basis that she only required assistance with IADLs.

DECISION AND ORDER


The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department improperly denied Appellant's request for HHS.

IT IS THEREFORE ORDERED THAT:

The Department's decision is **REVERSED**.



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


Date Signed: 8/29/2013

Date Mailed: 8/29/2013

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.