

**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. 2013-41760 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 appeared and testified on his own behalf. ██████████, Appellant's care provider, also testified as a witness for Appellant. ██████████, Appeals Review Officer, represented the Department of Community Health. ██████████, Adult Services Worker (ASW), and ██████████, Adult Services Supervisor, from the ██████████ County 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 man who has been diagnosed by a doctor with hypertension, congestive heart failure, diabetes, and atrial flutter. Appellant also reports kidney failure, back problems, and bad nerves. (Respondent's Exhibit A, page 5).
2. On ██████████, Appellant was referred for HHS. (Respondent's Exhibit A, page 4a).
3. On ██████████, ASW ██████████ conducted a visit and assessment in Appellant's home. Both Appellant and his proposed HHS provider were present. (Respondent's Exhibit A, pages 10-12).

4. During that visit, Appellant reported that his provider prepares his meals, does his housework, shops with him, and does his laundry. Appellant also reported that his provider helps him out of the bathtub if he sits in there too long and sets out his clothes for him. (Respondent's Exhibit A, pages 10-12; Testimony of ASW ██████████).
5. Appellant further reported that he bathes himself, eats on his own, and usually dresses himself. Appellant informed the ASW that he needs assistance with zippers/buttons and putting on his socks and shoes when his nerves are bad. (Respondent's Exhibit A, pages 10-12; Testimony of ASW ██████████).
6. ASW ██████████ observed Appellant's hands shaking during the home visit. However, Appellant was able to answer the phone without difficulty, zip up his pants on his own, and turn a doorknob. (Respondent's Exhibit A, pages 10-12; Testimony of ASW ██████████).
7. ASW ██████████ also observed Appellant walking and transferring with the assistance of a single-prong cane. (Respondent's Exhibit A, page 11; Testimony of ASW ██████████).
8. Based on the statements made by Appellant and his provider, in addition to her own observations, ASW ██████████ determined that Appellant did not meet the criteria for HHS as he did not require any hands-on assistance with any Activities of Daily Living (ADLs). (Respondent's Exhibit A, page 4a; Testimony of ASW ██████████).
9. On ██████████, the Department sent written notice to Appellant indicating that his 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 5-9).
10. On ██████████, the Michigan Administrative Hearing System (MAHS) received a Request for Hearing filed by Appellant in this matter. (Respondent's Exhibit A, page 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 (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 if he or she 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 as he requested. That decision was based on ASW ██████████ observations and the information obtained directly from Appellant during the home visit. As testified to by ASW ██████████ and recorded in her notes, Appellant reported that he could perform most of his ADLs independently and that his care provider only consistently assists him with IADLs. Moreover, while Appellant did inform her that he sometimes needs assistance in getting out of the bathtub, zipping up his pants, or putting on his socks/shoes, he was able zip up his pants on his own and transfer independently during the home visit.

In response, Appellant does not dispute ASW ██████████ testimony regarding the home visit and that his provider usually only assists him with IADLs. However, he did reiterate that his provider was sometimes assisting him with the ADLs bathing and dressing as well. Appellant also testified that his circumstances have become much worse since the denial in this case and that his provider now assists with mobility and eating, in addition to the assistance she was previously providing.

Appellant bears the burden of proving by a preponderance of the evidence that the Department erred in denying his application for HHS. 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 that decision.

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Here, given the above testimony and evidence regarding Appellant's request for services and need for assistance, Appellant has failed to meet that burden. Appellant's provider has only been consistently assisting him with IADLs in the past and, while Appellant reported occasional assistance with the ADLs of dressing and bathing, he was also able to demonstrate his ability to zip up his pants on his own and he was observed moving and transferring without difficulty. Accordingly, based on the information available at the time, the Department properly found that Appellant has no need for physical assistance with any ADLs and its decision to deny services on that basis must be affirmed.

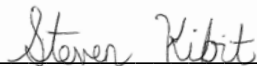
To the extent Appellant's condition has worsened and he now requires assistance with ADLs, he is free to re-apply for HHS at any time.

**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

  
Date Signed: 7/09/2013

Date Mailed: 7/9/2013

cc:



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**\*\*\* 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.