

**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. 2013-47429 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 girlfriend/care provider, 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 Worker (ASW) at ██████████ County DHS, testified as a witness for the Department.

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 ██████ year-old Medicaid beneficiary who has been diagnosed with a cerebral vascular accident/stroke, cardiomyopathy, and apraxia. (Respondent's Exhibit A, page 10).
2. Appellant has been receiving HHS through the Department. Most recently, he was authorized for 25 hours and 18 minutes of HHS per month, with a total monthly care cost of \$████████. (Respondent's Exhibit A, pages 14-15).
3. Specifically, Appellant was authorized for assistance with transferring, taking medications, housework, laundry, shopping, and meal preparation. (Respondent's Exhibit A, pages 14-15).
4. The tasks of taking medication, housework, laundry, shopping, 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).

5. Transferring is identified as an Activity of Daily Living (ADL) by the Department. (ASM 101, page 1 of 4).
6. On ██████████, ASW ██████ conducted a home visit and reassessment of Appellant's services. Both Appellant and his provider were present. (Respondent's Exhibit A, page 12).
7. During that home visit, ASW ██████ observed Appellant transferring, ambulating, and getting his medications independently. (Respondent's Exhibit A, page 12).
8. Appellant also reported that he was independent in transferring. (Respondent's Exhibit A, page 12).
9. Appellant and his provider further reported that the provider only assists him with transportation, shopping, laundry, meal preparation, and speaking to people. (Respondent's Exhibit A, page 12).
10. Based on that assessment, ASW ██████ determined that Appellant did not require any assistance with ADLs and, consequently, no longer qualified for HHS. (Testimony of ASW ██████).
11. On ██████████, the Department issued an Advance Negative Action Notice to Appellant indicating that his HHS would be terminated effective ██████████. The notice of termination also stated that Appellant's HHS was being terminated because he did not have a need for hands-on assistance with any ADLs as required by policy. (Respondent's Exhibit A, pages 6-8).
12. On ██████████, the Michigan Administrative Hearing System (MAHS) received a Request for Hearing in this matter. (Respondent's Exhibit A, pages 4-5).

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.

* * *

Services not Covered by Home Help

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

- Supervising, monitoring, reminding, guiding, teaching or encouraging (functional assessment rank 2).

*ASM 101, pages 1-3 of 4
(emphasis 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
(emphasis added)*

As described in the above policy, an individual is only eligible to receive HHS in general or for assistance with an IADL specifically if he or she has a need for assistance with at least one ADL at a level 3 or greater, *i.e.* some hands-on physical assistance.

The Department found that Appellant has no such need in this case and is therefore ineligible to receive any HHS. That decision was based on ASW ██████ observations and information obtained directly from Appellant and his provider. ASW ██████ observed Appellant independently transferring, ambulating, and getting his medications. Moreover, the only assistance Appellant and his provider reported as being provided to Appellant were either assistance with IADLs or assistance with non-covered services such as transportation. Appellant also expressly reported that he did not need the previously authorized transferring assistance and no other ADL assistance was identified.

In response, Appellant and his provider/representative testified that, in addition to assistance with IADLs, Appellant also requires assistance with the ADLs of transferring, grooming, and bathing. However, they also confirmed that Appellant reported being independent in transferring during the assessment. Other than stating that Appellant is difficult to understand sometimes, they could not explain why Appellant would report being independent in transferring if that was not the case. Appellant's representative further testified that ASW ██████ never asked about any other personal care tasks during the assessment and, consequently, the provider never reported the assistance with grooming and bathing.

Appellant bears the burden of proving by a preponderance of the evidence that the Department erred in terminating his HHS. Here, given the record in this case, Appellant and his representative have failed to meet that burden of proof.

Appellant was previously only receiving assistance with one ADL, *i.e.* transferring, and ASW credibly testified that she observed Appellant independently transferring during the home visit. Appellant also expressly reported that he was independent in transferring. Moreover, while Appellant may have misspoke during the assessment, his provider failed to correct him and the Department is justified in relying upon what was reported and what the ASW observed. Accordingly, it properly found that Appellant no longer qualified for HHS for assistance with the ADL of transferring.

With respect to other ADLs, ASW ██████ testified that Appellant and his provider failed to identify any assistance being provided with respect to any ADLs and this Administrative Law Judge finds ASW ██████ to be credible regarding what was reported during the home visit. Based on those reports, the Department properly found that Appellant does not require assistance with any other ADLs at level 3 or greater.

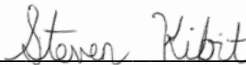
Accordingly, Appellant has therefore failed to meet his burden of proof and the decision to terminate his HHS must be affirmed.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly terminated Appellant's 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: 9/24/2013

Date Mailed: 9/24/2013

**Docket No. 2013-47429 HHS
Decision and Order**

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.