

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:

Docket No. 2013-49960 HHS

██████████

██████████

██████████

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 ██████████ Appellant's daughter and legal guardian ██████████ appeared and testified on behalf of the Appellant. ██████████ ██████████, Appeals Review Officer, represented the Department of Community Health. ██████████ ██████████ County DHS Adult Services Supervisor appeared as a witness for the Department. ██████████ Adult Services Supervisor was also present but did not testify.

ISSUE

Did the Department properly deny Appellant's request 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 was receiving HHS. (Testimony).
2. Appellant has been diagnosed with Schizophrenia, diabetes, HTN, muscle and bipolar disorder. (Exhibit A, p. 8).
3. On ██████████, ██████████ ASW, did a home visit with the Appellant and her provider to determine Appellant's continued eligibility for HHS. The ASW determined that Appellant did not meet the criteria for HHS as she did not need assistance with any of her ADLs only IADLs. (Exhibit A, pp. 13, 17 and testimony).

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4. On ██████████ the Department issued an Advance Negative Action Notice to Appellant informing her that her HHS would be terminated effective ██████████, based on policy and the fact that her most recent comprehensive assessment did not identify a need for assistance with any of her ADLs. (Exhibit A, pp. 9-12 and testimony).
5. On ██████████, 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.

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.

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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:

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- 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

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.

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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).

The testimony and evidence submitted by the Department establishes that Appellant was previously receiving HHS services. The records show that HHS was previously approved on ██████████ with a total monthly care cost of ██████████, for assistance with medication, laundry shopping, and meal preparation. (Exhibit A, pp. 16, 19). The records show Appellant's daughter/guardian/provider was receiving the payments for the HHS at a corporate rate higher than the normal county rate since she owns Halo Home Health Care. (Exhibit A, pp. 13 -16).

On ██████████ ASW ██████████ conducted an in-home comprehensive assessment with the Appellant and her provider and determined as the result of her assessment that the Appellant did not meet the criteria for HHS as she did not need assistance with any of her ADLs, only with her IADLs. (See Exhibit A, pp. 13, 17). The Medical Needs form on

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file from the Appellant's doctor indicates Appellant has chronic paranoid schizophrenia, and that she needs assistance with personal care activities, but no ADLs are specifically indicated on the form. On [REDACTED] Appellant was sent an Advance Negative Action Notice informing her that her HHS would be terminated effective [REDACTED] based on policy and the fact that her most recent comprehensive assessment did not identify a need for assistance with any of her ADLs.

The ASW's notes from her reassessment on [REDACTED] show that the Appellant and her provider were present for the re-assessment. When the ASW arrived for the assessment the Appellant was feeding herself a meal. The Appellant told the ASW she was ambulatory without the use of an assistive device. The Appellant's provider told the ASW that the Appellant gets lethargic periodically when she wakes up. The Appellant and her provider further told the ASW that the Appellant was able to bathe herself, groom herself, dress herself, feed herself, and toilet herself. The Appellant and her provider advised the ASW the Appellant only needed assistance with medications, laundry, shopping and some meal preparation.

During the hearing, Appellant's daughter testified that she told the ASW that sometimes the Appellant gets lethargic after she wakes up and she has to assist Appellant with all of her ADLs several days per week. Appellant's daughter indicated after Appellant's HHS was terminated she got another Medical Needs form from the Appellant's doctor to show she needs assistance with her ADLs. The Appellant's witness stated, however, that the Medical needs form was not submitted to DHS prior to the hearing. She also indicated she gives the Appellant injections and gives her wound care for a wound on her back. Appellant's daughter acknowledged that she did not tell the ASW this during the reassessment. The Appellant's daughter admitted during the hearing that the Appellant did not have physical disabilities; it was only her mental illness that caused her to need assistance.

The testimony of the Appellant's witness is contradicted by the totality of the evidence submitted in this case. Even the statements made by the witness in her hearing request are significantly different than her testimony at the hearing. She stated in the hearing request "that there are time when I have to totally do everything for mom" and "at least two times weekly I make sure mom has covered all of her hygiene personal areas". These statements call into question the accuracy of the testimony given at the hearing. Furthermore, the witness' admission that the Appellant does not have any physical disabilities coupled with the ASW's comprehensive assessment that showed no need for assistance with any ADLs also tend to discredit the witness' testimony. Verbal assistance alone does not support an authorization of HHS services. This conclusion is supported by the previous authorization of HHS assistance with IADLs only. It is clear that Appellant has failed to meet her burden of proof in this case.

The preponderance of reliable evidence in this case demonstrates that the Appellant does not need assistance with any of her ADLs. According to the policy quoted above, an individual is only eligible to receive HHS if he or she has a need for assistance with

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an ADL at a level 3 or greater. Furthermore, the reassessment completed by the Appellant's ASW demonstrated that the Appellant did not need assistance with any of her ADLs. Since the Appellant has no need for hands on assistance with any of her ADLs, she is 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**.

William D Bond

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

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

WDB/db

cc: [REDACTED]

***** 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.