

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

P.O. Box 30763, Lansing, MI 48909
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IN THE MATTER OF:

██████████,

Appellant.

Docket No. 2013-49965 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. ██████████, Appeals Review Officer, represented the Department of Community Health. ██████████, Adult Services Worker (ASW), and ██████████, Adult Services Supervisor, appeared as witnesses for the Department.

ISSUE

Did the Department properly remove mobility assistance from Appellant's Home Help Services (HHS) when reauthorizing his services?

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 bilateral plantar, lumbar pain, neck pain, dementia, hypertension, and Hepatitis C. (Respondent's Exhibit A, pages 13).
2. Appellant was authorized for HHS in the amount of 47 hours per month, with a total care cost of \$██████ per month, from ██████████ through ██████████. (Respondent's Exhibit A, page 17, 19).
3. Specifically, HHS had been authorized for assistance with bathing, dressing, mobility, housework, laundry, shopping, and meal preparation. (Respondent's Exhibit A, page 17).
4. On ██████████, ASW ██████████ attempted to conduct a home visit and reassessment of Appellant's services. However, the visit was not completed at Appellant's request because his provider was not present. (Respondent's Exhibit A, page 15).

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5. Soon after the attempted visit, and while ASW ██████ was outside of Appellant's home in her car, a woman slipped and fell on some ice. Appellant walked out of his home, using a straight single prong cane, and over to the woman. He then bent down and helped her up with his left hand, while holding his cane in his right hand. After helping the woman up, Appellant walked away. (Testimony of Appellant; Testimony of ASW ██████; Respondent's Exhibit A, page 15).
6. ASW ██████ observed Appellant walking and assisting the woman. (Testimony of ASW ██████; Respondent's Exhibit A, page 15).
7. On ██████, ASW ██████ completed a home visit and reassessment of services with Appellant and the provider. (Respondent's Exhibit A, page 15).
8. Following that home visit, ASW ██████ decided to reauthorize Appellant's HHS with the exception of mobility assistance, which was unnecessary given what she observed on ██████ (Testimony of ASW ██████; Respondent's Exhibit A, page 15).
9. The removal of mobility assistance was the only change to Appellant's HHS and he would now be authorized for \$ ██████ per month of HHS. (Respondent's Exhibit A, pages 16-17).
10. On ██████, the Department sent Appellant a Services and Payment Approval Notice stating that his HHS were reauthorized for \$ ██████ a month, with a start date of ██████. The notice also provided that mobility assistance had been removed and the reasons for that removal. (Respondent's Exhibit A, pages 11-12).
11. On ██████, the Michigan Administrative Hearing System (MAHS) received a Request for Hearing in this matter and some attached medical records sent in by Appellant. (Respondent's Exhibit A, pages 4-10).

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 Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

Home Help Services 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.

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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. In part, 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.

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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.]

Moreover, ASM 120 states:

Functional Assessment

The **Functional Assessment** module of the **ASCAP** comprehensive assessment is the basis for service planning and for the home help services 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)

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- 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.

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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.

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 102, pages 2-3 of 5.]

Here, the Department decided not to reauthorize mobility assistance after determining that Appellant did not meet the criteria for such services.

With respect to mobility assistance, Adult Services Manual 121 (11-1-2011), page of 4, provides:

Mobility - Walking or moving around inside the living area, changing locations in a room, assistance with stairs or maneuvering around pets, or obstacles including uneven floors.

- 1 No assistance required even though the client may experience some difficulty or discomfort. Completion of the task poses no risk to safety.
- 2 Client is able to move independently with only reminding or encouragement. For example, needs reminding to lock a brace, unlock a wheelchair or to use a cane.
- 3 Minimal hands-on assistance required for specific maneuvers with a wheelchair, negotiating stairs or moving on certain surfaces. Without the use of a walker or pronged cane, client would need physical assistance.
- 4 Requires hands-on assistance from another person with most aspects of mobility. Would be at risk if unassisted.
- 5 Totally dependent on other for all mobility. Must be carried, lifted or pushed in a wheelchair or gurney at all times.

Given the above policy and evidence in this case, Appellant has failed to meet his burden of proving by a preponderance of the evidence that the Department erred in removing his mobility assistance.

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It is undisputed in this case that Appellant was capable of walking out of his home in icy conditions with only the use of a straight cane; walking over to a woman who had fallen down and helping her up; and then walking back to his home without difficulty. Appellant testified that he was in pain for two weeks after doing so, but he never reported such pain during the subsequent home visit and this Administrative Law Judge does not find Appellant to be credible with respect to his capabilities.

Moreover, while assisting the woman, Appellant only used a straight, single prong cane and not the walker or pronged cane required by ASM 121. Appellant did testify that he sometimes uses a walker, but ASW [REDACTED] credibly testified that he never reported using a walker prior to the hearing and he did not use or display one during either the attempted home visit or the home visit itself.

Accordingly, per policy, Appellant does not meet the criteria for HHS with respect to mobility and the Department's decision must be affirmed.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that, the Department properly removed mobility assistance from Appellant's Home Help Services when reauthorizing his services.

IT IS THEREFORE ORDERED THAT:

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

Steven Kibit

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

[REDACTED]
Date Signed: 8/2/2013

Date Mailed: 8/2/2013

cc: [REDACTED]

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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.