

**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. 2013-50026 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 her own behalf. ██████████, Appellant's daughter, also testified on Appellant's behalf. ██████████, Appeals Review Officer, represented the Department of Community Health. ██████████, Adult Services Worker (ASW), and ██████████, Adult Services Supervisor, from ██████████ DHS testified 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 woman who has been diagnosed with fibromyalgia, carpal tunnel syndrome, lumbago, and lumbar neurogenic disc disease. (Respondent's Exhibit A, pages 10, 12).
2. In ██████████, Appellant was referred for HHS. (Respondent's Exhibit A, page 10).
3. As part of her application, Appellant submitted a medical needs form signed by her doctor. That form indicated that Appellant has a medical need for assistance with eating, bathing, grooming, dressing, taking medications, meal preparation, shopping, laundry and housework. (Respondent's Exhibit A, page 10).

4. On ██████████, ASW ██████████ conducted a visit and assessment in Appellant's home with Appellant. (Respondent's Exhibit A, page 9).
5. During that visit, Appellant reported that her provider comes over three days a week and assists her with meal preparation, shopping, housework, and sometimes dressing. (Respondent's Exhibit A, page 9; Testimony of ASW ██████████).
6. Appellant also reported that, at the time of the home visit, it had been two days since her provider was there. Appellant was dressed at that time and the washing machine and dryer were running with clothes in them. There was a plate of food and other snacks on the table. (Respondent's Exhibit A, page 9; Testimony of ASW ██████████).
7. ASW ██████████ further observed Appellant walking with a straight walking cane and transferring without the assistance of any other person. (Respondent's Exhibit A, page 9; Testimony of ASW ██████████).
8. Based on the statements made by Appellant during the home visit and her own observations; ASW ██████████ determined that Appellant did not meet the criteria for HHS as she did not require any hands-on assistance with any Activities of Daily Living (ADLs). (Testimony of ASW ██████████).
9. On ██████████, the Department sent written notice to Appellant indicating that her 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 5-8).
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.

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. Activities of Daily Living include Eating; Toileting; Bathing; Grooming; Dressing; Transferring; and Mobility.

The Department found that Appellant has no need for assistance with at least one ADL at a level 3 or greater in this case and is therefore ineligible to receive HHS as she requested. That decision was based on the information obtained directly from Appellant during the home visit and the ASW's observations. Appellant bears the burden of proving by a preponderance of the evidence that the Department erred in denying her application.

With respect to eating, while that task was identified as an area of need on the medical needs form, Appellant testified that she does not need help with that task and it is undisputed that she was eating independently on the day of the home visit. (Respondent's Exhibit A, page 10; Testimony of Appellant; Testimony of ██████████). Therefore the Department's decision regarding eating must be affirmed.

Similarly, Appellant acknowledges that she never requested assistance with the task of toileting and that she is independent in that area. (Testimony of Appellant).

Both the tasks of bathing and grooming were identified as an area of need on the medical needs form. (Respondent's Exhibit A, page 10). Appellant also testified during the hearing that her daughter/provider helps her get in-and-out of the bathtub; washes her hair; and brushes her hair. (Testimony of Appellant). However, it is not clear that Appellant needed or requested such assistance at the time of the denial in this case. This Administrative Law Judge is limited to reviewing the Department's decision in light of the information available at the time it made that decision and, in this case, ASW ██████████ credibly testified that Appellant reported no need for assistance with bathing or grooming during the home visit. (Respondent's Exhibit A, page 10; Testimony of ██████████). Moreover, Appellant acknowledges that she has memory problems and, given that she also testified that her condition has worsened since the home visit, she may be mixing up the assistance she needs now with what she needed then. To the extent Appellant's medical condition has worsened, she can always re-apply for HHS.

With respect to dressing, the doctor identified that task as an area of need on the medical needs form and Appellant testified that she sometimes needs assistance with dressing. (Respondent's Exhibit A, page 10; Testimony of Appellant). She also reported such a need during the home visit. (Respondent's Exhibit A, page 9). However, Appellant demonstrated her ability to dress herself on that day, as she was fully dressed and the provider had not worked that day, and she also reported that the provider only works three days a week. (Respondent's Exhibit A, page 9; Testimony of ASW ██████████). Appellant testified that she only needs assistance with dressing sometimes and undisputedly dresses herself the majority of the time. Therefore, Appellant both dresses herself independently the majority of the time and did so on the day of the home visit. Given that undisputed evidence, Appellant has failed to meet her burden of proof with respect to dressing assistance.

During the home visit, ASW ██████████ also observed Appellant transferring independently. (Respondent's Exhibit A, page 9; Testimony of ASW ██████████). Appellant does not dispute that testimony and appears to acknowledge that she does require assistance with transferring. (Testimony of Appellant).

With respect to mobility, ASW ██████████ testified that she observed Appellant walking independently, with a straight walking cane, during the home visit. (Respondent's Exhibit A, page 9; Testimony of ASW ██████████). Moreover, even if Appellant uses a cane, requiring the use of a single prong cane such as Appellant's cane does not rise to a ranking of 3 in mobility. See ASM 121, page 3 of 4. Accordingly, the Department properly found that Appellant does not require assistance with mobility at a level 3 or higher.

Appellant does argue that she needs assistance with transportation (Testimony of Appellant), but that is neither a covered HHS service in general or an ADL specifically. See ASM 101.

In this case, given the above testimony and evidence regarding Appellant's request for services and need for assistance, Appellant has failed to meet her burden of proving by the preponderance of the evidence that the Department erred in denying her request. 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.

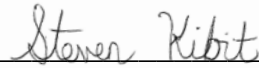

Docket No. 2013-50026 HHS
Decision and Order

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: 8/12/2013

Date Mailed: 8/12/2013

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.