

**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.

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Docket No. 2013-52623 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 daughter and care provider, appeared and testified on Appellant's behalf. ██████████, Appeals Review Officer, represented the Department of Community Health. ██████████, Adult Services Worker (ASW), and ██████████, Adult Services Supervisor, from the ██████████ 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 Medicaid beneficiary who has been diagnosed with joint pain, hip pain, migraines, and depression. (Respondent's Exhibit B, page 1).
2. On ██████████, Appellant was referred for HHS. (Respondent's Exhibit A, page 13).
3. As part of his application, Appellant submitted a medical needs form signed by her doctor. (Respondent's Exhibit B, page 1)
4. In that form, the doctor checked "NO" when asked if the doctor would certify that Appellant has a medical need for assistance with any of the personal care activities listed on the form. (Respondent's Exhibit B, page 1).

5. On ██████████, ASW ██████████ conducted a visit and assessment in Appellant's home with Appellant and Appellant's representative. (Respondent's Exhibit A, page 12).
6. During that visit, Appellant and her representative reported that Appellant requires assistance with the tasks of meal preparation, shopping, laundry, and housekeeping. (Respondent's Exhibit A, page 12; Testimony of ASW ██████████).
7. Those four tasks 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).
8. With respect to tasks identified as Activities of Daily Living (ADLs) by the Department, Appellant and her representative reported that Appellant is independent in eating, toileting, bathing, grooming, dressing, transferring, or mobility. They also reported that Appellant must be monitored while bathing. (ASM 101, page 1 of 4; Respondent's Exhibit A, page 12; Testimony of ASW ██████████).
9. On ██████████, the Department sent written notice to Appellant indicating that her application for HHS was being denied because her doctor stated that she does not need assistance in the home and because the home assessment did not identify a need for hands-on physical assistance with any ADLs. (Respondent's Exhibit A, pages 9-13).
10. On ██████████, the Michigan Administrative Hearing System (MAHS) received a Request for Hearing in this matter. (Respondent's Exhibit A, pages 3-4).

### **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.

Here, the Department denied Appellant's request for HHS for two reasons: (1) Appellant's doctor did not certify a medical need for assistance on the submitted medical needs form and (2) the home visit did not identify a need for hands-on, physical assistance with any ADLs.

Appellant bears the burden of proving by a preponderance of the evidence that the Department erred in denying her request. For the reasons discussed below, Appellant has failed to meet that burden in this case.

### **Medical Needs Form**

Adult Services Manual 105 (11-1-2011) (hereinafter "ASM 105") and Adult Services Manual 115 (11-1-2011) (hereinafter "ASM 115") address the requirements for a medical needs form in order for an applicant to receive HHS. For example, ASM 105 states in part, on pages 1-2 of 3, that:

#### **GENERAL**

Home help services are available if the client meets all eligibility requirements. An independent living services case may be opened to supportive services to assist the client in applying for Medicaid.

Home help services payments cannot be authorized prior to establishing Medicaid eligibility and a face-to-face assessment completed with the client. Once MA eligibility has been established, the case service methodology must be changed to case management.

#### **Requirements**

Home help eligibility requirements include all of the following:

- Medicaid eligibility.
- Certification of medical need.
- Need for service, based on a complete comprehensive assessment (DHS-324) indicating a functional limitation of level 3 or greater for activities of daily living (ADL).
- Appropriate Level of Care (LOC) status.

\* \* \*

#### **Medical Need Certification**

Medical needs are certified utilizing the DHS-54A, Medical Needs form and must be completed by a Medicaid enrolled medical professional. A completed DHS-54A or veterans administration medical form are acceptable for individual treated by a VA physician; see ASM 115, Adult Services Requirements.

Moreover, with respect to the required medical needs form, ASM 115, pages 1-2 of 3, also states:

**MEDICAL NEEDS FORM (DHS-54A)**

The DHS-54A, Medical Needs form must be signed and dated by a medical professional certifying a medical need for personal care services.

The medical professional must be an enrolled Medicaid provider and hold one of the following professional licenses:

- Physician (M.D. or D.O.).
- Nurse practitioner.
- Occupational therapist
- Physical therapist.

**Note:** A physician assistant (PA) is not an enrolled Medicaid provider and **cannot** sign the DHS-54A.

The medical needs form is only required at the initial opening for SSI recipients and disabled adult children (DAC). All other Medicaid recipients must have a DHS-54A completed at the initial opening and annually thereafter.

The client is responsible for obtaining the medical certification of need but the form must be completed by the medical professional and not the the [sic] client. The National Provider Identifier (NPI) number must be entered on the form by the medical provider and the medical professional must indicate whether they are a Medicaid enrolled provider.

The medical professional certifies that the client's need for service is related to an existing medical condition. **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.

If the medical needs form has not been returned, the adult services specialist should follow-up with the client and/or medical professional.

Do **not** authorize home help services prior to the date of the medical professional signature on the DHS-54A.

The medical needs form does not serve as the application for services. If the signature date on the DHS-54 is **before** the date on the DHS-390, payment for home help services must begin on the date of the application.

**Example:** The local office adult services unit receives a DHS-54A signed on 1/18/2011 but a referral for home help was never made. The adult services staff enters a referral on ASCAP and mails an application to the client. The application is returned to the office with a signature date of 2/16/2011. Payment cannot begin until 2/16/2011, or later, if the provider was not working during this time period.

If the case is closed and reopened within 90 days with no changes in the client's condition, a new DHS-54A is not necessary.

Therefore, pursuant to the above policy, an applicant must provide a medical needs form completed by enrolled Medicaid provider and certifying a medical need for services in order to receive HHS.

Here, Appellant failed to provide such a medical needs form. In the medical needs form she did provide, the doctor checked "NO" when asked if the doctor would certify that Appellant has a medical need for assistance with any of the personal care activities listed on the form.

The requirements for HHS are clear and Appellant did not satisfy that criteria as she failed to provide a medical needs form that meets all of the requirements found in policy. Accordingly, the Department properly denied Appellant's application.

### **ADL Assistance**

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**

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

[ASM 101, pages 1-3 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.

The Department found that Appellant has no such need in this case and is therefore ineligible to receive HHS as she requested. That decision was based on the information obtained directly from Appellant, her representative, and her doctor. As discussed above, the medical needs form submitted by Appellant's doctor indicated that Appellant does not have a need for any assistance. Similarly, the only assistance with any ADL identified by Appellant and her representative during the home visit was monitoring during bathing. Such assistance does not rise to the level required for HHS, level 3, under the applicable policy and assistance such as "Supervising, monitoring, reminding, guiding, teaching or encouraging (functional assessment rank 2)" is also expressly non-covered by HHS.

In response, Appellant's representative acknowledges everything relied upon the Department at the time of the denial to be true. Appellant's representative does argue that Appellant's health has deteriorated and that she now meets the criteria for HHS. However, this Administrative Law Judge's jurisdiction is limiting to reviewing the Department's decision in light of the information available at the time of that decision. Here, it is undisputed that Appellant did not require hands-on assistance with any ADLs at the time of the denial. To the extent Appellant's circumstances have changed, she is free to re-apply for the program.

Given the above testimony and evidence regarding Appellant's request for services and need for assistance, 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 as well

**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**.

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*Steven Kibit*

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

**Docket No. 2013-52623 HHS**  
**Decision and Order**

Date Signed: 8/23/2013

Date Mailed: 8/23/2013

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.