

**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. 2013-52632 HHS

Case No. [REDACTED]

[REDACTED],

Appellant.

_____ /

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 [REDACTED]. [REDACTED], Appellant's mother and care provider, appeared and testified on Appellant's behalf. Appellant also testified on his own behalf. [REDACTED], Appeals Review Officer, represented the Department of Community Health. [REDACTED], Adult Services Worker (ASW) at [REDACTED] 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 [REDACTED] year-old Medicaid beneficiary who has been diagnosed by a doctor with epilepsy and pain in his back and left sciatic nerve. Appellant also reports a seizure disorder, a brain lesion, anal bleeding, disc problems, intestinal instability, and anxiety. (Respondent's Exhibit A, page 14).
2. Appellant has received HHS through the Department since [REDACTED]. Most recently, he was authorized for 46 hours and 35 minutes of HHS per month. Specifically, Appellant was authorized for assistance with bathing, grooming, mobility, taking medication, housework, laundry, shopping, and meal preparation. (Respondent's Exhibit A, pages 12, 18).
3. On [REDACTED], ASW [REDACTED] conducted a home visit and reassessment of Appellant's services. Both Appellant and his provider were present. (Respondent's Exhibit A, pages 10-11).

4. During that home visit, ASW ██████████ noted that Appellant had not submitted a medical needs form since ██████████ because he was on SSI. However, as Appellant was no longer on SSI, he needed to submit a new form and one was provided to him. (Respondent's Exhibit A, pages 10-11).
5. Appellant's provider reported during the home visit that Appellant's needs had not changed and that he requires constant supervision. (Respondent's Exhibit A, page 10).
6. Appellant subsequently provided a medical needs form. However, in the section asking the doctor to certify that Appellant has a medical need for assistance with any of the listed activities, the "YES" box was checked while the "NO" box was whited out. (Petitioner's Exhibit 1, page 1).
7. ASW ██████████ telephoned Appellant's doctor directly and confirmed that the doctor had been the one to white out the NO box and check the YES box. (Respondent's Exhibit A, page 10; Testimony of ASW ██████████).
8. During that phone call, Appellant's doctor also stated that Appellant only required assistance with Instrumental Activities of Daily Living (IADLs). (Respondent's Exhibit A, page 10; Testimony of ASW ██████████).
9. 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 Activities of Daily Living (ADLs) as required by policy. (Respondent's Exhibit A, pages 5-8).
10. After receiving the notice, Appellant's provider telephoned ASW ██████████. During that conversation, the provider reiterated that Appellant cannot be left alone and requires supervision 24 hours a day, 7 days a week due to the danger of seizures. (Respondent's Exhibit A, page 9; Testimony of Appellant's representative).
11. On ██████████, the Michigan Administrative Hearing System (MAHS) received a Request for Hearing in this matter. (Respondent's Exhibit A, page 3).

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.

* * *

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 (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 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 obtained directly from Appellant, his provider, and his doctor regarding the lack of hands-on physical assistance with any ADLs.

In response, Appellant and her representative testified that Appellant requires constant supervision and monitoring due to his seizures, including during times when Appellant is performing ADLs such as bathing and transferring. They also testified that Appellant's needs have only gotten worse since the termination of services in this case.

Appellant bears the burden of proving by a preponderance of the evidence that the Department erred in terminating his HHS. Here, with respect to ADLs, it is undisputed that Appellant only requires supervision or monitoring. Such assistance does not rise to the level required for HHS under the applicable policy and, moreover, assistance such as "Supervising, monitoring, reminding, guiding, teaching or encouraging (functional assessment rank 2)" is also expressly non-covered by HHS. Appellant has therefore failed to meet his burden of proof and the Department properly found that he does not require assistance with any ADLs at level 3 or greater. Accordingly, the decision to terminate his HHS must be affirmed.

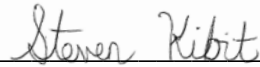

Docket No. 2013-52632 HHS
Decision and Order

DECISION AND ORDER


The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly terminated Appellant's HHS.

IT IS THEREFORE ORDERED THAT:

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

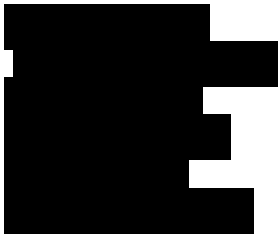


Steven Kibit
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health


Date Signed: 8/21/2013

Date Mailed: 8/21/2013

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.