

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. 2013-54093 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 care provider, appeared and testified on Appellant's behalf.¹ Appellant also testified on his own 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 seizure disorder, generalized anxiety, schizophrenia, and mood disorder. (Respondent's Exhibit A, page 13).
2. On ██████████, Appellant was referred for HHS. (Respondent's Exhibit A, page 11).
3. On ██████████, ASW ██████████ conducted a visit and assessment in Appellant's home. Both Appellant and ██████████, a representative of Appellant's provider agency, were present for that assessment. (Respondent's Exhibit A, page 9).

¹ Appellant's Request for Hearing identified ██████████ as his Authorized Hearing Representative (AHR). However, on the record at the hearing itself, he requested that ██████████ represent him.

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4. During that visit, Appellant reported that, while he lets his provider complete tasks for him, he is capable of completing all Activities of Daily Living (ADLs) on his own. (Respondent's Exhibit A, page 9; Testimony of ASW ██████████).
5. Appellant also reported that he does his own yard work, likes dancing, and enjoys walking. (Respondent's Exhibit A, page 9; Testimony of ASW ██████████).
6. Appellant further reported that his doctor has advised him to use a cane, but that he does not want or need one. Appellant did not use a cane when ambulating during the assessment. (Respondent's Exhibit A, page 9; Testimony of ASW ██████████).
7. ██████████ did not contradict or correct any of Appellant's reports. (Respondent's Exhibit A, page 9; Testimony of ASW ██████████).
8. On ██████████, the Department sent written notice to Appellant indicating that his application for HHS was being denied because Appellant did not have a need for direct physical assistance with any ADLs. (Respondent's Exhibit A, pages 5-8).
9. On ██████████, the Michigan Administrative Hearing System (MAHS) received a Request for Hearing with respect to that denial. (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 101 101 (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.

The Department found that Appellant has no such need in this case and is therefore ineligible to receive HHS as he requested. That decision was based on the information obtained directly from Appellant. As discussed above, Appellant reported during the home visit that he is capable of completing all ADLs on his own; he enjoys tasks such as dancing and walking; and he ambulates without a cane. Appellant also walked without a cane during the home visit and the provider present during the assessment did not contradict or correct any of Appellant's reports.

In response, Appellant's representative testified that, due to his mental conditions and personality, Appellant cannot be trusted to accurately report the assistance he needs. She also testified that ██████████ may have been present during the assessment and she may be from the provider's agency, but she is not Appellant's specific provider and would not know what exact assistance he needs. According to Appellant's representative, Appellant does require direct physical assistance with ADLs such as grooming and bathing.

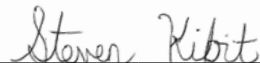
Appellant bears the burden of proving by a preponderance of the evidence that the Department erred in denying his application. In this case, given the above testimony and evidence regarding Appellant's reports during the home visit, Appellant has failed to meet that burden. Appellant, who does not have a legal guardian, reported that he is independent in all ADLs and the Department is justified in relying on those answers, especially where a provider is also present during the visit and did not contradict the Appellant. Accordingly, 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.

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

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Date Signed: 8/30/2013

Date Mailed: 8/30/2013

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.