

**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. 2013-54664 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 ██████████. ██████████ from ██████████
██████████ appeared and testified on Appellant's behalf. ██████████,
Appeals Review Officer, represented the Department of Community Health. ██████████
██████████, Adult Services Supervisor, appeared as a witness for the Department.

ISSUE

Did the Department properly reduce 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 ██████ year-old Medicaid beneficiary who has been diagnosed with a hypothyroid, osteoarthritis, degenerative joint disease, hypertension, and radiculopathy. Appellant also has a medical history including uterine cancer surgery. (Respondent's Exhibit A, page 9).
2. Appellant has been receiving HHS since ██████████. (Respondent's Exhibit A, page 8).
3. Prior to the negative action at issue in this appeal, Appellant was approved for HHS in the amount of 73 hours and 53 minutes per month, with a total care cost of \$ ██████████ per month. (Respondent's Exhibit A, page 16).
4. Specifically, HHS had been authorized for assistance with bathing, grooming, dressing, toileting, transferring, mobility, taking medications, light housework, laundry, shopping, and meal preparation. (Respondent's Exhibit A, page 16).

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5. The assistance for the task of mobility was authorized for 20 minutes a day, 7 days a week. (Respondent's Exhibit A, page 16).
6. On [REDACTED], Adult Services Worker (ASW) [REDACTED] conducted a home visit and reassessment of Appellant's services. (Respondent's Exhibit A, page 14).
7. During that visit and reassessment, ASW [REDACTED] noted that Appellant's cancer was spreading and her pain increasing. Overall, however, ASW [REDACTED] found that there were no changes to Appellant's ranking or functions. (Respondent's Exhibit A, page 14).
8. With respect to mobility, ASW [REDACTED] kept Appellant's ranking at a "3" after finding that Appellant continued to need to use a walker for all mobility. (Respondent's Exhibit A, page 19).
9. Following that visit and reassessment, Adult Services Supervisor [REDACTED] reviewed the case and determined that any payments for mobility assistance should be denied as Appellant was able to ambulate with a walker. (Respondent's Exhibit A, page 14; Testimony of [REDACTED]).
10. With the mobility assistance removed, Appellant would receive 63 hours and 51 minutes of HHS per month, with a total monthly care cost of \$ [REDACTED]. (Respondent's Exhibit 17).
11. On [REDACTED], the Department sent Appellant written notice that her HHS would be reduced on [REDACTED] because she is able to ambulate independently. (Respondent's Exhibit A, page 7).
12. On [REDACTED], the Michigan Administrative Hearing System (MAHS) received a request for hearing 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 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, pages 1-3 of 4, 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

* * *

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).

Moreover, ASM 120, pages 2-4 of 5, 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

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- 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.

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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.

In this case, the Department reduced Appellant's HHS from 73 hours and 53 minutes per month, with a total care cost of \$997.49 per month, to 63 hours and 51 minutes of HHS per month, with a total monthly care cost of \$862.04. That reduction was based solely on the removal of mobility assistance.

With respect to mobility, Adult Services Manual 121 (11-1-2011), page 3 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.

Pursuant to the above definition, ASW [REDACTED] ranked Appellant a "3" in mobility after finding that Appellant continued to need to use a walker for all mobility. However, while Appellant was ranked a "3" in mobility and Home Help payments may be authorized for

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needs assessed at the 3 level or greater; the Department removed the mobility assistance in this case. As provided in policy and testified to by Adult Services Supervisor ██████████, HHS payments can only be made for covered services actually provided and the mere fact that Appellant is ranked a “3” in mobility does not justify HHS where no actual assistance is provided in that area.

In response, Appellant’s representative testified that Appellant does require and receive some direct physical assistance with mobility. Specifically, Appellant must be physically assisted when using the stairs between the first floor, where Appellant’s bedroom is located, and the second floor, where the bathroom is located. According to Appellant’s representative, Appellant is assisted up the stairs once a day and, while she may not require all of the 20 minutes of mobility assistance she was receiving, she does need some assistance.

Appellant and her representative bear the burden of proving by a preponderance of the evidence that the Department erred in reducing her services. Moreover, in reviewing the Department’s decision, this Administrative Law Judge is limited to reviewing that decision in light of the information available at the time the decision was made.

In this case, given the above evidence and policies, Appellant has failed to meet her burden of proof. The Department’s action was based on reports made during the assessment and Appellant’s representative, who was not present during that visit, failed to present any evidence or direct testimony contradicting the Department’s evidence related to what was reported to the Department. Additionally, Appellant’s representative even conceded that the previous authorization of HHS was excessive with respect to mobility.

To the extent Appellant and her representative have new information they would like to report, Appellant is free to re-request mobility assistance in the future. However, the past decision to remove mobility assistance is affirmed based on the information available at the time.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that, the Department properly reduced Appellant’s HHS.

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

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Date Signed: 9/4/2013

Date Mailed: 9/4/2013

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.