

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF:

Docket No. 2013-58250 HHS

██████████,

██████████

██████████

Appellant.

_____ /

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 C.F.R. § 431.200 *et seq.*, upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. Appellant appeared and testified on his own behalf. ██████████, Appeals Review Officer, represented the Department of Community Health. ██████████ Adult Services Worker (ASW) from the ██████████ County DHS ██████████ Office, appeared as a witness for the Department. ██████████ Adult Services Supervisor was also present but did not testify.

ISSUE

Did the Department properly deny Appellant's request 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.
2. Appellant has been diagnosed by a physician with major depressive disorder, chronic pain, and a gunshot wound to the back. (Exhibit A, p. 7).
3. On ██████████, Appellant's physician completed a DHS-54A Medical Needs form but did not check either the yes or no box to indicate whether Appellant had a medical need for assistance with personal care activities. Appellant was given a second medical needs form to be completed by his doctor's office. (Exhibit A, p. 7 and testimony).
4. On ██████████ another DHS-54A was received by DHS purporting to be from the nurse practitioner assigned to the Appellant at ██████████. However, the NPI number on it was incorrect, as it only contained nine digits, the person who allegedly completed it did not state their title, and there were misspellings contained on the form. The ASW also noted the signature on the form did not match the signature on the first form

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purporting to be from the same individual. [REDACTED] Appellant's care coordinator from [REDACTED] advised there was no record in their files of the second medical needs form. (Exhibit A, pp. 16, 17 and testimony).

5. On [REDACTED], the ASW, did a home visit with the Appellant and did a face-to-face assessment to determine Appellant's eligibility for HHS. The ASW determined that Appellant did not meet the criteria for HHS as he did not need assistance with any of his ADLs. (Exhibit A, pp. 8, 15 and testimony).
6. On [REDACTED], the Department issued an Adequate Action Notice to Appellant informing him that HHS would be denied based on the policy effective [REDACTED], that a person who does not require the need for hands on assistance with at least one activity of daily living is not eligible for HHS. (Exhibit A, pp. 10-14 and testimony).
7. On [REDACTED], MAHS received Appellant's Request for Hearing. (Exhibit A, p. 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 (11-1-2011) (hereinafter "ASM 120") address the issues of what services are included in Home Help Services and how such services are assessed:

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

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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.

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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. [ASM 101, pages 1-2 of 4].

Services not Covered by Home Help Services

Home help services must **not** be approved for the following:

- Supervising, monitoring, reminding, guiding of encouraging (functional assessment rank 2). [ASM 101, page 3 of 4].

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

ADL's and IADL's are assessed according to the following five-point scale:

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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 6].

Here, the ASW testified on [REDACTED] she sent out an Adequate Negative Action Notice to the Appellant indicating that his request for HHS would be denied based on the policy effective [REDACTED] that a person who does not require the need for hands on assistance with at least one activity of daily living is not eligible for HHS. (See Exhibit A, pp. 10-14). The ASW stated on [REDACTED] she did a home visit with the

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Appellant and did a face-to-face assessment to determine Appellant's eligibility for HHS. She determined the Appellant did not meet the criteria for HHS as he did not need assistance with any of his ADLs.

On [REDACTED] the Appellant came to the ASW's office without an appointment. They discussed the second medical needs form he had submitted and eventually he admitted that he had checked off some of the items on the second medical needs form. (See Exhibit A, p. 6). The ASW stated the Appellant was able to get out of his chair and was able to walk without assistance while in her office. The ASW stated she reviewed Appellant's ADLs and IADLs and Appellant indicated his sister reminds him to take his medication, and helps with his laundry, shopping, meals and housework. The ASW determined that the Appellant had tampered with the second medical needs form and further that he had no need for assistance with his ADLs. (Exhibit A, p. 15 and testimony).

The ASW stated she met with the Appellant in his apartment on [REDACTED]. Appellant advised her he had been shot in the back in [REDACTED], and that there is still a bullet in his back. The ASW noted there was no tub or shower in the Appellant's apartment, and Appellant advised he bathes in the basement. The ASW determined that the Appellant was not using a cane or other mobility device or any other adaptive equipment. Appellant told the ASW he uses a hot plate and a microwave to do his own cooking, but relatives also bring him a plate of food from time to time. Appellant told the ASW he has back pain and a poor memory. Appellant also stated he has trouble standing at times. However, the ASW stated she observed Appellant to have no balance or gait issues. (Exhibit A, p. 15, and testimony).

The ASW stated she reviewed Appellant's ADLs and IADLs tasks and determined that at most the Appellant needed minor assistance with his IADLs. Otherwise, he is independent in all of his ADLs. Accordingly, based on her comprehensive assessment she determined the Appellant was not eligible for HHS. (Exhibit A, pp. 8, 15 and testimony).

The ASW acknowledged the rankings she gave Appellant on his ADLs and IADLs, and stated he was not ranked at a 3 or greater for any of his ADLs. (See Exhibit A, p. 18). The ASW referenced the policy on eligibility for HHS, (ASM 120, page 3 of 5), which states HHS may only be authorized for needs assessed at the 3 level or greater and that an individual must be assessed with at least one activity of daily living in order to be eligible to receive HHS. The ASW concluded that this policy supported the negative action she took in this case.

During the hearing, Appellant testified he has been going to [REDACTED] for about [REDACTED] years. Appellant indicated he was in a major car accident and his mind is not really here. He said he might have checked off the medical needs form when he first got it. Appellant indicated when he got the second medical needs form he took it to the doctor to get it filled out correctly. He said that the doctor told him certain parts to fill out. Appellant indicated he is supposed to have a cane and a back brace, but he doesn't use

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the cane often and doesn't use his back brace. Appellant indicated he was shot in [REDACTED] and still has a bullet in his back. He indicated he has upper back pain near his neck and he has lower back pain. Appellant testified his mind is not good, he forgets things. He indicated he even forgets to eat.

On cross examination Appellant indicated he needs help bathing because he can't stand alone, he indicated he can barely move his arm and shoulder, and can't bend all the way over due to the bullet in his back. On further questioning, Appellant said he can feed himself, but forgets to eat. He said he can toilet himself, brush his teeth, and put on his clothes and shoes. He indicated he can raise his hands above his head but it is just tight. Appellant also said he might not have told the ASW about the records concerning his gunshot. Appellant said he could drive but doesn't drive. He also said he can only stand for about an hour or two at a time. Appellant stated he took the bus to get to the hearing. In his conclusion remarks Appellant stated as for taking medicine, meal preparation, cleaning up, shopping, laundry, and light house work; that he doesn't do any of these things for himself.

The preponderance of the reliable evidence presented in this case demonstrates that at the time of the ASW's assessment the Appellant did not need assistance with any of his ADLs. According to the policy quoted above, an individual is only eligible to receive HHS if he has a need for assistance with an ADL at a level 3 or greater. See ASM 101, page 2 of 4; ASM 120, page 3 of 6. Appellant had demonstrated no such need at the time of his assessment and was properly found to be ineligible to receive any type of HHS. Accordingly, the Department's decision must be sustained.

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**.



William D. Bond
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

Date Signed: [REDACTED]

Date Mailed: [REDACTED]


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WDB/db

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.