

**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. 2013-63596 HHS

██████████

██████████

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 hearing.

After due notice, a hearing was held on ██████████. At Appellant's request on the record, ██████████ a representative ██████████ appeared on her behalf. Appellant also testified on her own behalf. ██████████ Appeals Review Officer, represented the Department of Community Health. ██████████ Adult Services Supervisor from the ██████████ County-District ██████████ DHS office appeared as a witness for the Department.

ISSUE

Did the Department properly deny Appellant's request for Home Help Services (HHS)?¹

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 cervicalgia, lumbago, knee pain, degenerative joint disease, and carpal tunnel syndrome. (Respondent's Exhibit A, pages 10, 14).
2. On ██████████ Appellant was referred for HHS. (Respondent's Exhibit A, page 9).
3. As part of her application, Appellant submitted a medical needs form signed by her doctor on ██████████ (Respondent's Exhibit A, page 14).

¹ Following the denial at issue in this case, Appellant reapplied for HHS and her request has been approved, with an effective start date of ██████████. Nevertheless, this appeal is not moot as a reversal could affect the start date of Appellant's services.

4. That form indicated that Appellant has a medical need for assistance with the tasks of mobility, shopping, laundry, and housework. (Respondent's Exhibit A, page 14).
5. The tasks of shopping, laundry, and housework 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).
6. The task of mobility is identified as Activity of Daily Living (ADL) by the Department. (ASM 101, page 1 of 4).
7. On ██████████, Adult Services Worker (ASW) ██████████ conducted a visit and assessment in Appellant's home with Appellant and her son/care provider. (Respondent's Exhibit A, page 13).
8. During that assessment, Appellant reported that she was independent in all personal care ADLs. (Respondent's Exhibit A, page 13).
9. Appellant also reported that she was a fall risk and wanted to get a cane. She was not using a cane at the time of the home visit and ambulated independently. (Respondent's Exhibit A, page 13).
10. Appellant further reported that she needed assistance with the IADLs of meal preparation, shopping, laundry, and housework. (Respondent's Exhibit A, page 13).
11. Based on the assessment, ASW ██████████ determined that Appellant's request for HHS should be denied as she did not require any human assistance or adaptive equipment with respect to any ADL. (Respondent's Exhibit A, page 9).
12. On ██████████, the Department sent written notice to Appellant indicating that her application for HHS was being denied. (Respondent's Exhibit A, pages 6-8).
13. On ██████████, the Michigan Administrative Hearing System (MAHS) received the Request for Hearing in this matter. (Respondent's Exhibit A, pages 4-5).
14. Following the denial in this case, Appellant reapplied for HHS and her request was approved, with a start date of ██████████ (Testimony of Appellant).

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.

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

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 2-4 of 5

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 and her son. They only requested assistance with IADLs during the home visit and they specifically reported that Appellant is independent in all ADLs.

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In response, Appellant testified that, in addition to the assistance she needs with respect to IADLs, she also requires assistance with the ADLs of bathing, dressing, grooming, and mobility. Appellant also notes that she was subsequently approved for HHS after reapplying, with an effective start date of ██████████. According to Appellant and her representative, her needs did not change between the denial at issue in this case and the subsequent approval, which suggests that she never should have been denied HHS initially.

Appellant bears the burden of proving by a preponderance of the evidence that the Department erred in denying her application. Moreover, in reviewing that decision, this Administrative Law Judge is limited to reviewing the Department's decision based on the information available at the time.

In this case, while Appellant now reports that she needs assistance with bathing, dressing and grooming, her doctor did not identify any need for such assistance on the medical needs form submitted as part of Appellant's application. Moreover, this Administrative Law Judge finds ASW ██████'s reports that Appellant never requested such assistance to be credible.

Moreover, while mobility was circled on the medical needs form, it is undisputed that Appellant was not using any adaptive equipment at the time of the home visit and was ambulating independent. The mere fact that Appellant reported that she wanted a cane is not enough to justify a ranking of 3 or above given the applicable definition for mobility found in policy. 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.

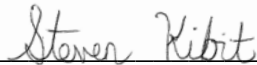
Accordingly, with respect to the denial at issue in this case, the Department properly found that Appellant has no need for physical assistance with any ADLs based on the information available at the time and its decision to deny services on that basis must be affirmed.

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

Date Signed: [REDACTED]

Date Mailed: 1 [REDACTED]

SK/db

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.