

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. 2013-65730 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.

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. (Testimony).
2. Appellant has been diagnosed with back pain, muscle spasms, asthma & shortness of breath. (Exhibit A, pp. 5a and 7).
3. On ██████████ the Appellant's physician completed a Medical Needs Form, a DHS-54A, but failed check either "Yes" or "No" on the form to indicate whether the Appellant had a medical need for assistance with personal care activities. The doctor did circle shopping, laundry and housework. (Exhibit A, p. 5a).
4. On ██████████ 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

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not need hands on assistance with any of his ADLs. (Exhibit A, pp. 12-13 and testimony).

5. On [REDACTED], the Department issued an Adequate Action Notice to Appellant informing him that HHS would be denied because his recent assessment did not demonstrate that he had a need for hands on assistance with any of his ADLs. (Exhibit A, pp. 5, 8-11 and testimony).
6. 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 (5-1-2012) (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 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.

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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, emphasis added].

Services not Covered by Home Help Services

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

- Supervising, monitoring, reminding, guiding or 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:

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.

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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, emphasis added].

Here, the ASW testified on ██████████, she did a home visit with the Appellant and a woman who was to be the Appellant's chore provider and did a face-to-face assessment to determine Appellant's eligibility for HHS. The ASW determined the Appellant did not meet the criteria for HHS as he did not need hands on assistance with any of his ADLs.

The ASW stated when she arrived for the assessment Appellant was observed going down the steps to his home and back up again after disposing of some garbage. The ASW stated during the home visit the Appellant stood up and sat down a number of times while getting some papers, his medications, and a prepared meal that he reheated for himself. The ASW observed the Appellant reaching up into his cupboard, sitting down, and also touching his toes. Appellant was able to make a fist and showed no impairment in gross or fine motor skills.

The ASW went over his ADLs and IADLs and Appellant did not need hands on assistance with bathing, but said he was afraid of slipping in the tub. Appellant indicated he could brush his teeth while sitting down, and indicated he needed help with his shoes and socks, but the ASW observed him reaching down and touching his toes without difficulty. The ASW was able to determine that the Appellant was independent in transferring, toileting and mobility. Appellant also indicated he needed help with some of his IADLs including help with the lawn, sweeping and vacuuming, and lifting heavy laundry, or groceries while shopping at the store. Appellant was able to deal with his own medications, could cook his own meals, and indicated he had plans to host and

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prepare a BBQ the next day on the [REDACTED] of [REDACTED]. Appellant advised the ASW that he could wash, peel, slice, mix ingredients and clean up afterwards, he just needed help lifting heavy pots and pans and other stuff. (Exhibit A, pp.12-13 and testimony).

The ASW referred to the rankings she gave the Appellant as a result of her assessment. The Appellant was ranked a one for independent for all of his ADLs. The ASW also stated the Medical Needs form, the DHS-54A, completed by the Appellant's doctor and submitted along with the Appellant's application, did not have either "Yes" or "No" checked on the form to indicate whether the Appellant had a medical need for assistance with personal care activities. The doctor did circle shopping, laundry and housework. (Exhibit A, p. 5a).

The ASW stated on [REDACTED] she sent out an Adequate Negative Action Notice to the Appellant informing him that HHS would be denied because he did not need hands on assistance with any of his ADLs. (See Exhibit A, pp. 5, 8-11).

The ASW referenced the policy on eligibility for HHS, (see ASM 120, page 3 of 5), and stated 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 acknowledged that the policy supported the negative action she took in this case.

During the hearing, the Appellant indicated that he has been approved for SSI because he can no longer work. He said he used to do home care for his mother. He also stated he is under doctor's care for his injury where he slammed his finger in the car door. (Exhibit A, p. 12 and testimony). Appellant indicated he could only walk about three blocks and then he is done. Appellant stated he needs help around his house and would appreciate the help. When questioned by the Department representative, Appellant claimed he needed help sometimes getting off the toilet, that he might fall due to a dizzy spell; that he needs help getting out of the tub; that he has trouble putting on his socks and shoes; and because of his balance, he might have some trouble getting up and down. Appellant's testimony is contradicted by the information contained in the Medical needs form submitted by his doctor, as well as, the observations and information gathered by the ASW during her comprehensive assessment of the Appellant during the home visit.

The preponderance of reliable evidence in this case demonstrates that a Medicaid enrolled medical professional did not certify Appellant's need for assistance with hands on assistance with any of his ADLs. According to the policy quoted above, HHS cannot be approved unless certified by a Medicaid enrolled medical professional. Furthermore, needed services must be determined by the comprehensive assessment conducted by the ASW. 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 5. 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.

[REDACTED]
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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

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

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

WDB/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.