

**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. 2013-66192 HHS

██████████,

██████████

██████████

Appellant.

_____ /

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 niece, appeared and testified on Appellant's behalf. ██████████ Appeals Review Officer, represented the Department of Community Health. ██████████ Adult Services Worker (ASW), testified as a witness for the Department.

ISSUE

Did the Department properly terminate 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 hepatitis, peripheral neuropathy, diabetes mellitus, and human immunodeficiency virus (HIV). (Respondent's Exhibit A, page 11).
2. Appellant has been receiving HHS through the Department and was most recently authorized for █████ hours and █████ minutes of HHS per month, with a total monthly care cost of █████. (Respondent's Exhibit A, pages 13).
3. Specifically, Appellant was authorized for assistance with taking medications, housework, laundry, shopping, and meal preparation. (Respondent's Exhibit A, pages 15).
4. The tasks of taking medications, housework, laundry, shopping, and meal preparation 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).

5. While Appellant was only receiving assistance with IADLs and an individual is only eligible to receive HHS if he or she has a need for assistance with at least one Activity of Daily Living (ADL) at a level 3 or greater, Appellant had previously been found to be eligible because he required the use of a walker in the home and was therefore ranked a 3 in the ADL of mobility. (Testimony of ASW ██████████).
6. On ██████████ ASW ██████████ conducted a home visit and reassessment of Appellant's services with Appellant. (Respondent's Exhibit A, page 9).
7. During that home visit, Appellant reported that he only needs assistance with housework, laundry, shopping, and meal preparation. (Respondent's Exhibit A, page 9; Testimony of ASW ██████████).
8. Appellant also transferred and ambulated independently, and without the use of any walker or adaptive equipment, during the assessment. (Respondent's Exhibit A, page 9; Testimony of ASW ██████████).
9. Appellant further reported that he does not use his walker within the home. (Respondent's Exhibit A, page 9; Testimony of ASW ██████████).
10. On ██████████, the Department issued an Advance Negative Action Notice to Appellant indicating that his HHS would be terminated effective ██████████. The notice of termination also stated that Appellant's HHS was being terminated because he did not have a need for hands-on assistance with any ADLs as required by policy. (Respondent's Exhibit A, pages 5-8).
11. On ██████████, 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 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

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

- Supervising, monitoring, reminding, guiding, teaching or encouraging (functional assessment rank 2).

*ASM 101, pages 1-3 of 4
(Emphasis 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.

██████████
Docket No. 2013-66192 HHS
Decision and Order

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)*

As described in the above policy, an individual is only eligible to receive HHS in general or for assistance with an IADL specifically if he or she has a need for assistance with at least one ADL at a level 3 or greater, *i.e.* some hands-on physical assistance.

The Department found that Appellant has no such need in this case and is therefore ineligible to receive any HHS. That decision was based on information obtained directly from Appellant during the home visit. As written in his notes and testified to by ASW ██████████, Appellant expressly reported that he only requires assistance with the IADLS of housework, laundry, shopping, and meal preparation. Appellant also reported that he does not use his walker within the home and he transferred and ambulated independently, without the use of any walker or adaptive equipment, during the home visit.

In response, Appellant's representative testified that she, Appellant's home help worker, and Appellant's neighbor provide more assistance than the worker is paid for. In addition to assistance with IADLs, Appellant also requires assistance with bathing,

grooming, paying bills, and transportation. According to his representative, Appellant also needs to be monitored so that he does not wander outside his home. Appellant's representative further testified that Appellant's own reports cannot be trusted as Appellant has dementia and makes things up.

Appellant bears the burden of proving by a preponderance of the evidence that the Department erred in terminating his HHS. Here, given the record in this case, Appellant's representative failed to meet that burden of proof and the Department's decision must be sustained.

Appellant's representative testified that Appellant requires assistance with transportation and paying bills, in addition to having a need for supervision at times. However, as provided in the above policy and testified to by the Department's witness, supervision,

transportation, and assistance with paying bills are not covered services in the Home Help Program.

Moreover, while Appellant's representative testified that Appellant needs assistance with the ADLs of bathing and grooming, Appellant has never received such assistance in the past and none was requested during the home visit. The Department is justified in relying upon what was reported during the home visit, especially where Appellant is an adult, does not have a legal guardian, and there is no evidence of any cognitive issues.

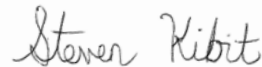
This Administrative Law Judge is limited to reviewing the Department's decision in light of the information it had the time it made that decision. Here, based on Appellant's own reports, Appellant's need for assistance with any ADLs did not rise to a level 3 or greater at the time relevant to this decision. To the extent Appellant's needs have changed or his representative has new information to provide, they are free to re-request HHS at any time.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly terminated Appellant's 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: [REDACTED]

SK/db

cc: [REDACTED]

Docket No. 2013-66192 HHS
Decision and Order

***** 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.