

**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. 2013-69113 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 care provider/brother, appeared and testified on Appellant's behalf. Appellant and her father were also present, but did not testify. ██████████, Appeals Review Officer, represented the Department of Community Health. ██████████, Adult Services Worker (ASW), and ██████████, Adult Services Supervisor, from ██████████ County DHS testified as witnesses for the Department.

ISSUE

Did the Department properly decide to 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 mental retardation and obesity. (Respondent's Exhibit A, pages 10, 15).
2. Appellant has been receiving ██████ hours and ██████ minutes of HHS per month, with a total monthly care cost of ██████. Specifically, Appellant was authorized for assistance with bathing; grooming; dressing; toileting; taking medications; housework; laundry; shopping; and meal preparation. (Respondent's Exhibit A, page 14).
3. On ██████████, ASW ██████████ conducted an in-home annual reassessment of Appellant's services. Both Appellant and her representative/care provider were present. (Respondent's Exhibit A, page 12).

¹ Appellant's case was consolidated with an HHS case involving her father, 2014-11447 HHS, for purposes of the hearing.

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4. During that reassessment, Appellant's provider reported that Appellant's mother helps her with bathing, washing her hair, and toileting. (Respondent's Exhibit A, page 12; Testimony of ASW [REDACTED]).
5. Appellant's provider also reported that Appellant is physically capable of putting on her own clothes, but that she puts them on incorrectly. (Respondent's Exhibit A, page 12; Testimony of ASW [REDACTED]).
6. Based on those reports, ASW [REDACTED] decided to remove assistance with bathing and toileting as that assistance was not being provided by the paid HHS worker. (Respondent's Exhibit A, page 12-14).
7. ASW [REDACTED] also decided to reduce Appellant's assistance with dressing from [REDACTED] minutes a day, [REDACTED] days a week, to [REDACTED] minutes a day, [REDACTED] days a week, in light of Appellant's ability to physically dress herself with some assistance. (Respondent's Exhibit A, pages 13-14; Testimony of ASW [REDACTED]).
8. Overall, Appellant's HHS were to be reduced to [REDACTED] hours and [REDACTED] minutes per month, with a total monthly care cost of [REDACTED]3. (Respondent's Exhibit A, pages 13-14).
9. On [REDACTED], the Department sent Appellant written notice that her HHS would be reduced to [REDACTED] on [REDACTED] (Respondent's Exhibit A, pages 7-8).
10. On [REDACTED] the Michigan Administrative Hearing System (MAHS) received a Request for Hearing in this matter. (Respondent's Exhibit A, page 5).

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") addressed the issues of what services are included in Home Help Services and how such services are assessed at the time of the action in this case.

In part, ASM 101, pages 1-2 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.

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

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
- 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.

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In this case, following a visit and reassessment, the Department reduced Appellant's services by reducing the minutes per day for assistance with dressing and removing the assistance with bathing and toileting entirely.

Appellant and her representative dispute the removal of assistance with bathing and toileting. In doing so, Appellant bears the burden of proving by a preponderance of the evidence that the Department erred.

Here, Appellant has failed to meet that burden of proof and the Department's decision must be sustained. The Department based the removal of assistance with bathing and toileting on the reports made by Appellant's provider during the home visit that Appellant's mother helps her with bathing, washing her hair, and toileting. Pursuant to the above policy, the Department cannot authorize HHS where someone other than the provider is supplying the necessary assistance.

ASW ██████████ documented those statements in her report regarding the reassessment, which was made on the day of the reassessment, and also testified regarding what she was told.

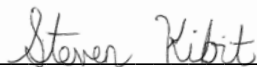
In response, Appellant's representative/provider testified that he only meant to say that his mother assists Appellant with bathing and toileting a few days a month, when Appellant is on her period, and that the ASW must have misunderstood him. However, this Administrative Law Judge finds ASW ██████████ testimony and report to be more credible as to what was reported. The Department is justified on relying on those reports and, based on what the care provider said, properly reduced Appellant's services.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly reduced 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: ██████████

Date Mailed: ██████████

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[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.