

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**
P.O. Box 30763, Lansing, MI 48909
(517) 335-2484; Fax: (517) 373-4147

IN THE MATTER OF:

Docket No. 14-006898 HHS

██████████

██████████

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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 Authorized Hearing Representative, appeared on Appellant's behalf. Appellant also testified on his own behalf. ██████████, Appeals Review Officer, represented the Department of Community Health (DCH or Department). ██████████, Adult Services Worker (ASW), and ██████████, Adult Services Supervisor, from the ██████████ County Department of Human Services (DHS) testified as witnesses 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 who has been diagnosed with cervical/lumbar myositis; anxiety; depression; sleep apnea; high blood pressure; high cholesterol; and headaches. (Respondent's Exhibit A, page 10).
2. On ██████████, Appellant was referred for HHS. (Respondent's Exhibit A, page 9).

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3. As part of the application process for those services, Appellant submitted a medical needs form signed by his doctor on [REDACTED]. (Respondent's Exhibit B, page 1).
4. In that form, Appellant's doctor indicated that Appellant only has a medical need for assistance with the tasks of meal preparation, shopping, laundry, and housework. (Respondent's Exhibit B, page 1).
5. The tasks of meal preparation, shopping, laundry, and housework are identified as Instrumental Activities of Daily Living (IADLs) by the Department. (Adult Services Manual 101 (12-1-2013) (hereinafter "ASM 101"), page 2 of 5).
6. On [REDACTED], ASW [REDACTED] conducted an assessment in Appellant's home with Appellant and a representative from a provider agency. (Respondent's Exhibit A, pages 15-17).
7. During that assessment, Appellant reported an inability to put on his pants or socks due to pain; difficulties remembering to take his medications as prescribed; and frustrations or discomfort when attempting to complete his own meal preparation, shopping, laundry, and housework. (Respondent's Exhibit A, pages 16-17; Testimony of [REDACTED]).
8. The task of dressing is identified as an Activity of Daily Living (ADL) by the Department while the task of taking medication is another IADL. (ASM 101, page 2 of 5).
9. Appellant's reports conflicted with the information provided on the medical needs form and ASW [REDACTED] own observations, so she telephoned Appellant's doctor on [REDACTED]. (Respondent's Exhibit A, page 15).
10. During that telephone conversation, Appellant's doctor reported that the doctor did not see a need for personal care as Appellant comes in for appointments on his own; does not require the use of any adaptive equipment; and is only restricted in the area of heavy lifting. (Respondent's Exhibit A, page 15).
11. On [REDACTED] the Department sent Appellant written notice that his application for HHS was being denied as he did not require hands-on assistance with any ADLs and therefore did not meet the requirements for eligibility. (Respondent's Exhibit A, pages 7-8).
12. However, the notice of denial also stated at one point that Appellant was eligible for HHS. (Respondent's Exhibit A, page 7).

13. On ██████████, the Department sent another written notice of denial, explaining that the one statement of eligibility in the previous notice had been made in error and reiterating that he did not meet the eligibility requirements for HHS because he did not require hands-on assistance with any ADLs. (Respondent's Exhibit A, pages 11-14).
14. On ██████████, the Michigan Administrative Hearing System (MAHS) received the request for hearing filed by Appellant in this matter. (Respondent's Exhibit A, pages 5-7).

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 (12-1-2013) (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 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.

Note: If an individual uses adaptive equipment to assist with an ADL, and without the use of this equipment the person would require hands-on care, the individual must be ranked

a level 3 or greater on the functional assessment. This individual would be eligible to receive home help services.

Example: Mr. Jones utilizes a transfer bench to get in and out of the bathtub which allows him to bathe himself without the hands-on assistance of another. The adult services specialist must rank Mr. Jones a 3 or greater under the functional assessment. Mr. Jones would be eligible to receive home help services.

Assistive technology would include such items as walkers, wheelchairs, canes, reachers, lift chairs, bath benches, grab bars and handheld showers.

* * *

Services not Covered by Home Help

- Supervising, monitoring, reminding, guiding, teaching or encouraging (functional assessment rank 2).
- Services provided for the benefit of others.
- Services for which a responsible relative is able and available to provide (such as house cleaning, laundry or shopping). A responsible relative is defined as an individual's spouse or a parent of an unmarried child under age 18.
- Services provided by another resource at the same time (for example, hospitalization, MI-Choice Waiver).
- Transportation - See Bridges Administrative Manual (BAM) 825 for medical transportation policy and procedures.
- Money management such as power of attorney or representative payee.
- Home delivered meals.
- Adult or child day care.

- Recreational activities. (For example, accompanying and/or transporting to the movies, sporting events etc.)

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Note: The above list is not all inclusive.

ASM 101, pages 1-3, 5 of 5

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 if assessed at a level 3 or greater.

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 [sic] if the assessment determines a need at a level 3 or greater.

Note: If an individual uses adaptive equipment to assist with an ADL, and without the use of this equipment the person would require hands-on care, the individual must be ranked a level 3 or greater on the functional assessment. This individual would be eligible to receive home help services.

Example: Mr. Jones utilizes a transfer bench to get in and out of the bathtub, which allows him to bathe himself without the hands-on assistance of another. The adult services specialist must rank Mr. Jones a 3 or greater under the functional assessment. Mr. Jones would be eligible to receive home help services.

Assistive technology includes such items as walkers, wheelchairs, canes, reachers, lift chairs, bath benches, grab bars and hand held showers.

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 7

As described in the above policy, an individual is only eligible to receive HHS in general, or with any IADLs in particular, if he or she has a need for assistance with at least one ADL at a level 3 or greater on the functional scale.

The Department found that Appellant has no such need in this case and is therefore ineligible to receive HHS as he requested.

Appellant bears the burden of proving by a preponderance of the evidence that the Department erred in denying his request for HHS

Given the record in this case, Appellant has failed to meet that burden of proof and the Department's decision must be affirmed. That decision was based on information obtained directly from Appellant's doctor and the credible observations of ASW ██████████. As discussed above, the medical needs form submitted in this case only certified a need for assistance with IADLs and Appellant's doctor also told ASW ██████████ on the telephone that he did not see a need for personal care at all as Appellant comes in for appointments on his own; does not require the use of any adaptive equipment; and is only restricted in the area of heavy lifting. Moreover, while Appellant testified regarding a need for assistance with ADLs, he could not explain why his doctor would fail to certify such a need and much of his claims only suggest a need for reminding, or encouraging, which are not services covered by HHS.

Appellant and his representative did bring a new medical needs form, signed by a different doctor on ██████████, to the hearing, but that form is immaterial to this decision as the undersigned Administrative Law Judge's jurisdiction is limited to reviewing the Department's decision in light of the information it has at the time it made that decision. To the extent Appellant or his representative have additional or updated information to provide, they are free to reapply for HHS, along with all the relevant

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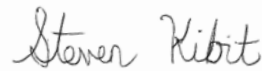
documents and information. With respect to the decision at issue in this case, however, the Department's decision must be affirmed given the available information.

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 Nick Lyon, Director
Michigan Department of Community Health

Date Signed: [REDACTED]

Date Mailed: [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.