

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARINGS SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH
P.O. Box 30763, Lansing, MI 48909
Phone: (517) 335-3997; Fax: (517) 373-4147**

IN THE MATTER OF:

Docket No.: 14-012813 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, an in-person hearing was held on ██████████ ██████████ ██████████ ██████████, Appellant's daughter, appeared and testified on Appellant's behalf. ██████████ ██████████, Appeals Review Officer, represented the Respondent Department of Community Health (DCH or Department). ██████████ ██████████, Adult Services Worker (ASW), and ██████████ ██████████, Adult Services Supervisor, with 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 obesity, osteoarthritis, diabetes, hypertension, sleep apnea, depression, anxiety, and asthma. (Respondent's Exhibit A, pages 5, 11).
2. On ██████████ ██████████ Appellant was referred for HHS. (Respondent's Exhibit A, page 6).
3. On ██████████ ██████████, ASW ██████████ ██████████ completed an assessment with Appellant, her daughter, and her potential home help provider in Appellant's home. (Respondent's Exhibit A, pages 10-13).

4. During that assessment, Appellant stated that she was married, but that she and her husband were separated and that she lived alone. (Respondent's Exhibit A, page 11; Testimony of ██████████ Testimony of Appellant's representative).
5. However, the Department's ██████████ system indicated that, as of that date, ██████████ people lived in the home, including Appellant's husband, and that Appellant was receiving Food Assistance Program (FAP) benefits for ██████████ people in the home. (Respondent's Exhibit A, pages 18, 23; Testimony of ██████████)
6. ASW ██████████ then sent Appellant a medical needs form Appellant could have her husband's physician complete if Appellant's husband was unable to assist her with the needed tasks. (Respondent's Exhibit A, page 13; Testimony of ██████████)
7. No response was ever received. (Respondent's Exhibit A, page 13; Testimony of ██████████)
8. On ██████████, the Department sent Appellant written notice that her application for HHS would be denied as of ██████████ on the basis that Appellant's husband is a responsible relative able to assist her. (Respondent's Exhibit A, pages 7-9).
9. The notice also indicated that Appellant had until the effective date of the denial to submit a completed medical needs form with respect to Appellant's husband. (Respondent's Exhibit A, page 8).
10. No medical needs form was ever received. (Testimony of ██████████)
11. On ██████████, the Michigan Administrative Hearing System (MAHS) received the Request for Hearing filed 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.

Adult Services Manual 101 (12-1-2013) (hereinafter “ASM 101”) and Adult Services Manual 120 (12-1-2013) (hereinafter “ASM 120”) address the issues of what services are included in HHS and how such services are assessed. For example, ASM 101 states in part:

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.
- Light housecleaning.

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 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 or her daughter agrees to assist her at no charge. 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 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.

ASM 101, pages 1-3 of 5

Additionally, ASM 120 provides in part:

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/cleanup.
- Shopping for food.
- 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 or her daughter agrees to assist her at no charge. 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 includes such items as walkers, wheelchairs, canes, reachers, lift chairs, bath benches, grab bars and hand held showers.

* * *

Time and Task

The specialist will allocate time for each task assessed a rank of 3 or greater, based on interviews with the client and provider, observation of the client's abilities and use of the reasonable time schedule (RTS) as a **guide**. The RTS can be found in ASCAP under the Payment module, Time and Task screen. When hours exceed the RTS, a rationale **must** be provided.

An assessment of need, at a ranking of 3 or greater, does not automatically guarantee the maximum allotted time allowed by the reasonable time schedule (RTS). **The specialist must assess each task according to the actual time required for its completion.**

Example: A client needs assistance with cutting up food. The specialist would only pay for the time required to cut the food and not the full amount of time allotted under the RTS for eating.

IADL Maximum Allowable Hours

There are monthly maximum hour limits on all instrumental activities of daily living (IADL) except medication. The limits are as follows:

- Five hours/month for shopping.
- Six hours/month for light housework.
- Seven hours/month for laundry.
- 25 hours/month for meal preparation.

Proration of IADLs

If the client does not require the maximum allowable hours for IADLs, authorize only the amount of time needed for each task. Assessed hours for IADLs (except medications) must be prorated by **one half** in shared living arrangements

where other adults reside in the home, as home help services are **only** for the benefit of the client.

Note: This does not include situations where others live in adjoining apartments/flats or in a separate home on shared property and there is no shared, common living area.

In shared living arrangements, where it can be **clearly** documented that IADLs for the eligible client are completed separately from others in the home, hours for IADLs do not need to be prorated.

Example: Client has special dietary needs and meals are prepared separately; client is incontinent of bowel and/or bladder and laundry is completed separately; client's shopping is completed separately due to special dietary needs and food is purchased from specialty stores; etc.

ASM 120, pages 2-6 of 7

Here, Appellant's application for HHS was denied on the basis that Appellant's husband is a responsible relative who is able and available to care for her. With respect to responsible relatives, ASM 101 states:

Services not Covered by Home Help

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

* * *

- 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.

ASM 101, page 5 of 5

Similarly, with respect to responsible relatives, ASM 120, page 6 of 7, provides:

Responsible Relatives

A responsible relative is defined as an individual's spouse or a parent of an unmarried child under age 18.

Activities of daily living may be approved when the responsible relative is **unavailable** or **unable** to provide these services.

Note: Unavailable means absence from the home for an extended period due to employment, school or other legitimate reasons. The responsible relative must provide a work or school schedule to verify they are unavailable to provide care. **Unable** means the responsible person has disabilities of their own which prevent them from providing care. These disabilities must be documented and verified by a medical professional on the DHS-54A, Medical Needs form.

Do **not** approve shopping, laundry, or light housecleaning, when a responsible relative of the client resides in the home, **unless** they are unavailable or unable to provide these services. Document findings in the general narrative in ASCAP.

Example: Mrs. Smith is in need of home help services. Her spouse is employed and is out of the home Monday thru Friday from 7a.m. to 7p.m. The specialist would not approve hours for shopping, laundry or house cleaning as Mr. Smith is responsible for these tasks.

Example: Mrs. Jones is in need of home help services. Her spouse's employment takes him out of town Monday thru Saturday. The specialist may approve hours for shopping, laundry or house cleaning.

Appellant's husband clearly meets the definition of a responsible relative and, under Department policy, HHS for the Appellant can therefore only be authorized for those services or times where Appellant's husband is unavailable or unable to provide care.

Here, while Appellant reported that her husband was unavailable to provide care as they are separated and he lives outside her home, the Department's ██████████ system clearly indicated that, as of the date of the denial in this case, Appellant had reported that ██████████ people lived in her home, including her husband, to the Food Assistance Program (FAP) and that the benefits Appellant received through that program were based on ██████████ people living in the home. Moreover, while ASW ██████████ sent Appellant a medical needs form Appellant could have her husband's physician complete if Appellant's husband was unable to assist her with the needed tasks, no such form was ever received.

In response, Appellant's daughter testified that Appellant is separated from her husband and that she lives alone. Appellant's representative also testified that, while the [REDACTED] system may have identified Appellant's husband as living with her at the time of the denial in this case, the [REDACTED] system was subsequently corrected after Appellant updated her status with FAP after the denial in this case.

Appellant bears the burden of proving by a preponderance of the evidence that the Department erred in denying her application for HHS. Moreover the undersigned Administrative Law Judge is limited to reviewing the Department's decision in light of the information it had at the time it made that decision.

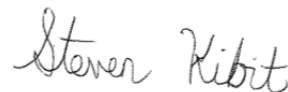
Given the above evidence and the information available to the Department at the time it made its decision, Appellant failed to meet her burden of proof. Appellant's husband is a responsible relative the evidence at the time of the denial demonstrated that he was available and able to provide care. To the extent Appellant's circumstances have changed, she can always re-request HHS with new or updated information. The decision at issue in this case however, 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 Director, Nick Lyon
Michigan Department of Community Health

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

[REDACTED]
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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.