

**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:

██████████

Appellant.

_____ /

Docket No. 14-014510 HHS

██████████

██████████

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 telephone hearing was held on ██████████. Appellant appeared and testified on her own behalf. ██████████, Appeals Review Officer, represented the Department of Community Health (DCH or Department). ██████████, social worker; ██████████, Adult Services Supervisor; and ██████████, social services specialist; 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 post fracture arthritis in her foot. (Respondent's Exhibit A, pages 7, 9).
2. On ██████████, Appellant was referred for HHS. (Respondent's Exhibit A, page 8).
3. As part of the application process for those services, Appellant submitted a medical needs form signed by her doctor on ██████████. (Respondent's Exhibit A, page 6).

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4. In that form, Appellant's doctor indicated that Appellant has a medical need for assistance with the tasks of bathing, grooming, dressing, meal preparation, shopping, laundry, and housework. (Respondent's Exhibit A, page 6).
5. However, in the comments section of the form, the doctor also noted that it was Appellant who stated that she is unable to bathe, groom or dress without assistance. (Respondent's Exhibit A, page 6).
6. On ██████████, ██████████ conducted an assessment in Appellant's home with Appellant. (Respondent's Exhibit A, pages 15-16).
7. During that assessment, ██████████ observed Appellant walking and bending independently and without difficulty, and without the use of any adaptive equipment. (Respondent's Exhibit A, page 15; Testimony of ██████████).
8. Appellant did report a need for assistance with meal preparation, shopping, laundry, and housework at times when her right foot becomes swollen. (Respondent's Exhibit A, page 15; Testimony of ██████████).
9. Appellant also reported that she was independent in bathing, grooming, toileting, dressing, and taking medications. (Respondent's Exhibit A, page 15; Testimony of ██████████).
10. On ██████████, Appellant and her proposed home help provider met with ██████████ at the local DHS office. (Respondent's Exhibit A, page 14).
11. At that time, Appellant was again walking independently and without the use of any adaptive equipment. (Respondent's Exhibit A, page 14).
12. On ██████████, the Department sent Appellant written notice that her application for HHS was being denied as her needs did not rank a "3" with respect to any Activities of Daily Living and she therefore did not meet the criteria for eligibility. (Respondent's Exhibit A, pages 10-13).
13. On ██████████ the Michigan Administrative Hearing System (MAHS) received the request for hearing filed by Appellant in this matter. (Respondent's Exhibit A, pages 4-5).

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 (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 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.

ASM 101, pages 1-3 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

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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 was therefore ineligible to receive HHS as she requested.

Appellant challenges that decision on appeal and, in doing so, bears the burden of proving by a preponderance of the evidence that the Department erred in denying her request 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

Here, given the information available at the time of the denial, Appellant has failed to meet her burden of proof and the Department's decision must be affirmed. For example, while Appellant reported a need for assistance with the IADLs of meal preparation, shopping, laundry, and housework because of her right foot becoming swollen at times, she did not identify a need for assistance with any ADLs and she expressly reported that she was independent in bathing, grooming, toileting, dressing, and taking medications. Additionally, as also found above, Nelson credibly testified that, both times she met with Appellant, she observed Appellant walking and bending independently, without difficulty, and without the use of any adaptive equipment.

Moreover, while the medical needs form signed by Appellant's doctor appeared to certify a need for assistance with the ADLs of bathing, grooming and dressing, the form also appeared to indicate that any certification was based solely on Appellant's statements and not the findings of the doctor. Similarly, the medical needs form is contradicted by Appellant's own statements during the home assessment and her testimony during the hearing, where Appellant expressly testified that she is independent in grooming and dressing.

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Accordingly, given the information obtained directly from Appellant and Nelson's credible observations, the Department properly denied Appellant's request.

In response, Appellant acknowledged that she only remembers reporting a need for assistance with IADLs during the home assessment, but she also testified that her right foot is permanently damaged, she is now using a cane prescribed by her doctor, and she sometimes needs assistance with getting in-and-out of the bathtub.

However, as discussed above, the undersigned Administrative Law Judge's jurisdiction is limited to reviewing the Department's decision in light of the information it had at the time it made that decision and, consequently, any new information is immaterial to this decision.

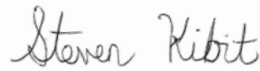
To the extent Appellant has new or updated information to provide, she is free to reapply for HHS, along with all the relevant documents and information. With respect to the decision at issue in this case, however, the Department's decision must be affirmed.

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 Nick Lyon, Director
Michigan Department of Community Health

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

SK/db

cc: [REDACTED]

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***** 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.