

**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. 2014-22389 HHS
Case No. ██████████

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 daughter, appeared and testified on Appellant's behalf. Appellant also testified on her own behalf through an interpreter. ██████████, Appeals Review Officer, represented the Department of Community Health. ██████████, Adult Services Worker (ASW) at the ██████████ (DHS), appeared as a witness for the Department.

ISSUE

Did the Department properly deny Appellant's request for ██████████ (██████████)?

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 ██████████ who has been diagnosed with hypertension; pseudohypoparathyroidism; arthritis; and chronic kidney disease, stage III. (Respondent's Exhibit A, pages 11, 16).
2. Appellant was previously receiving ██████████ through the Department, but those services were terminated at her own request after she stated that she no longer needed or wanted the services. (Testimony of Appellant's representative).
3. On ██████████, Appellant was again referred for ██████████.

(Respondent's Exhibit A, page 10).

4. As part of the application process, Appellant submitted a medical needs form signed by her doctor on ██████████ 13. (Respondent's Exhibit A, page 16).
5. According to Appellant's representative, the doctor who completed the medical needs form has been Appellant's doctor for years and is familiar with Appellant's medical conditions and needs. (Testimony of ██████████).
6. In that form, Appellant's doctor only certified that Appellant has a medical need for assistance with the tasks of taking medication, meal preparation, laundry, and housework. (Respondent's Exhibit A, page 16).
7. The task of taking medication, meal preparation, laundry, and housework are all 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).
8. On ██████████, ██████████ conducted an assessment with Appellant in the offices of the Oakland County DHS. (Respondent's Exhibit A, pages 13-14).
9. ASW ██████████ and Appellant utilized an interpreter for the assessment. (Respondent's Exhibit A, pages 13-14).
10. During that assessment, the ASW asked Appellant about the tasks covered by ██████████ and Appellant reported that her provider assisted her with her medications, meal preparation, shopping, laundry, and housework. (Respondent's Exhibit A, pages 13-14; Testimony of ██████████).
11. Appellant also reported that, while her provider encourages and monitors her, she can usually bath, groom, and dress herself. (Respondent's Exhibit A, pages 13-14; Testimony of ██████████).
12. Appellant further reported that she is independent in transferring and mobility; and ██████████ also observed Appellant walking and transferring without any assistance or any adaptive equipment. (Respondent's Exhibit A, pages 13-14; Testimony of ██████████).
13. While Appellant's provider was present at the time ██████████ interviewed and assessed Appellant, ██████████ did not interview Appellant's provider. (Testimony of Appellant's representative; Testimony of ██████████).
14. The provider did complete an employment form and indicated on that form that she assists Appellant with grooming, dressing, taking medications,

meal preparation, shopping, laundry, and housework. (Respondent's Exhibit A, pages 13-14).

15. Following the assessment, ██████████ telephoned Appellant's doctor in order to discuss the medical needs form. (Respondent's Exhibit A, page 15; Testimony of ██████████).
16. During that conversation, Appellant's doctor confirmed what was indicated on the form, *i.e.* that Appellant only needed assistance with the tasks of taking medication, meal preparation, laundry, and housework. (Respondent's Exhibit A, page 15; Testimony of ██████████).
17. On ██████████, the Department sent Appellant written notice that her application for HHS was being denied as she did not require any hands-on assistance with any Activity of Daily Living (ADL). (Respondent's Exhibit A, pages 5-9).
18. On ██████████, the Michigan Administrative Hearing System (██████████) received the request for hearing filed by Appellant 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 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.)

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.

The Department found that Appellant has no such need in this case and is therefore ineligible to receive HHS as she requested. The Department's decision was based on information obtained directly from Appellant and her doctor. For example, Appellant's doctor only certified that Appellant had a need for assistance with the IADLs in taking medication, meal preparation, laundry, and housework. Moreover, as credibly testified to by ASW ██████████ and documented in her notes, Appellant also only reported a need for hands-on assistance with IADLs during the assessment.

Appellant and her representative bear the burden of proving by a preponderance of the evidence that the Department erred in making that decision.

Here, Appellant's representative testified that she assists Appellant with both IADLs and ADLs, including the ADLs of grooming, dressing, bathing, and mobility. She also

testified that Appellant has obtained a cane since the time of the assessment and denial. Appellant's representative further testified that ██████████ erred by interviewing Appellant without the representative/provider being present given Appellant's language difficulties and state of mind.

However, Appellant is an independent adult and the Department, which utilized an interpreter for the assessment, is justified in relying upon her answers. Moreover, this 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, which in this case included Appellant's statements that she only needed assistance with IADLs and that she was independent in mobility. The fact that Appellant subsequently obtained a cane is immaterial to this matter.

Additionally, ██████████ credible testimony regarding what Appellant reported was confirmed by Appellant's doctor in both the medical needs form and a subsequent phone call. Appellant's representative also confirmed that Appellant's doctor is well aware of Appellant's needs and medical conditions, but could not explain why the doctor failed to certify any need for assistance with ADLs.

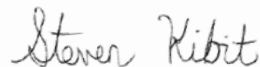
Given the content of the medical needs form submitted by Appellant's doctor, in addition to ██████████ credible notes and testimony, this Administrative Law Judge finds that Appellant and her representative have failed to meet their burden of proving that the Department erred. The Department properly found that Appellant had no need for physical assistance with any ADLs and its decision to deny services on that basis 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 James K. Haveman, Director
Michigan Department of Community Health

Date Signed: 4/10/2014

Date Mailed: _____

[REDACTED]
Docket No. 2014-22389 HHS
Decision and Order

SK [REDACTED]

cc:

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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.