

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF:

██████████,

Appellant.

Docket No. 2014-31219 HHS
Case No. ██████████

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 C.F.R. § 431.200 *et seq.*, upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. Appellant was represented by ██████████

██████████, Appeals Review Officer, represented the Department of Community Health. ██████████dowd, Adult Services Worker (ASW) from the ██████████ DHS Office, appeared as a witness for the Department.

ISSUE

Did the Department properly terminate 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 had been receiving HHS. (Testimony)
2. Appellant has been diagnosed with mental and not physical impairments- paranoid schizophrenia, and obsessive compulsive disorder by his physician. By self-report, Appellant has high cholesterol (Exhibit A.10)
3. The Department uses a functional tool to assess HHS eligibility that measures physical capacity functions resulting from medical impairments. The tool does not measure the ability to function when the only impairment(s) is mental.
4. The ASW testified that "Lansing" did an audit of this case and requested

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that the Department close the case. The ASW testified that if Appellant did not have a provider, that Appellant would not be living independently.

5. On [REDACTED], Appellant's ASW did a home visit with the Appellant and did a face-to-face assessment to determine Appellant's continued eligibility for HHS. The ASW determined that Appellant did not meet the criteria for HHS as he did not need have a ranking of 3 or greater for any ADLs. (Exhibit A.11)
6. Appellant's ASW noted that Appellant's health issues/mental disabilities will never improve; and that Appellant requires HHS assistance in order to remain in independent living. (Exhibit A.11-12)
7. On [REDACTED], the Department issued an Advance Action Notice to Appellant informing him that his HHS would be terminated as the in-home assessment did not show the Appellant required assistance with at least one ADL assessed at a level 3 or greater. (Exhibit A.5-8)
8. On [REDACTED], MAHS received Appellant's Request for Hearing. Appellant stated in part that he had serious problems that prevent him from doing many ADLs and IADLs independently (Exhibit A.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 (11-1-2011) (hereinafter "ASM 101") and Adult Services Manual 120 (11-1-2011) (hereinafter "ASM 120") address the issues of what services are included in Home Help Services and how such services are assessed:

Home Help Payment Services

Home Help Services are non-specialized personal care service activities provided under the independent living

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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.

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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. (ASM 101, pages 1-2 of 4).

Services not Covered by Home Help Services

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

- Supervising, monitoring, reminding, guiding of encouraging (functional assessment rank 2); (ASM 101, page 3 of 4).

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

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- Meal Preparation and Cleanup
- Shopping
- Laundry
- Light Housework/Functional Scale

ADL's and IADL's 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

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living and instrumental activities of daily living. (ASM 120, pages 2-3 of 6).

The ASW stated he conducted an in-home assessment with the Appellant and issued an Advance Negative Action Notice to the Appellant stating that his HHS would be terminated, as the in-home assessment did not show the Appellant required assistance with at least one ADL assessed at a level 3 or greater. The ASW further advocated on behalf of Appellant stating that Appellant would not be functioning independently without HHS and would not remain in his home.

Appellant's representative testified that she assists Appellant with virtually all of his ADLs and IADLs-with meal preparation, laundry, bathing.

Evidentially, Appellant is functionally and physically able to engage in certain activities that would indicate that he has the physical capacity to do such activities as bathing, folding clothes, re-heating food. However, due to his mental condition, without an individual monitoring and reminding and prompting Appellant, he would not and cannot perform ADLs and IADLS despite the functional capacity.

The program goals of the HHS program-independent living services per ASM 101 and the functional scale are inherently and patently inconsistent where the only impairment is a mental impairment. On the one hand, federal and state law state that HHS is a program to assist individuals to live independently who have disabilities from both physical and "cognitive impairments". (See ASM cited above) At the same time, the tool that the Department is required to use to assess limitations is a tool that assess physical functions and capacities, not mental. Moreover, the ranking system specifically excludes "prompting" from a rank of 3 or greater, even in a situation where an individual cannot be left alone.

The notes from her face-to-face demonstrate that the Appellant does not have any physical impairment that would prevent him from completing his ADLs. Appellant advised the ASW that he did not need help with grooming, dressing, continence, respiration, toileting, transferring, eating or mobility. Appellant stated that he needed help with cooking, cleaning, shopping, laundry, and his medications. Appellant advised he could physically complete all of these activities, but stated he needed help because he either couldn't do them well or didn't know how to do them. (Exhibit A, pp. 12).

The preponderance of reliable evidence in this case demonstrates that the Appellant does need assistance with any of his ADLs. Appellant did claim he needed help with grooming, but the observations of the ASW and the medical needs form from Appellant's doctor contradict his testimony in this regard. According to the policy quoted above, an individual is only eligible to receive HHS if he or she has a need for assistance with an ADL at a level 3 or greater. Furthermore, the need for services is determined by the comprehensive assessment conducted by the ASW and not by the Appellant's doctor. See ASM 101, pp. 1-3 of 4; ASM 120, page 3 of 6. Appellant has

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no such need and is therefore ineligible to receive any type of HHS. Accordingly, the Department's decision must be upheld.

The ASW advised Appellant she would check to see if there were any other programs that could provide assistance to him.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly terminated Appellant's HHS.

IT IS THEREFORE ORDERED THAT:

The Department's decision is **AFFIRMED**.

Janice Spodarek
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Signed:

[REDACTED]

Date Mailed:

[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.