

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH
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IN THE MATTER OF:

██████████,

Appellant.

Docket No. 2014-34610 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 appeared. Appellant was represented by his guardian and caregiver, ██████████.

██████████, Appeals Review Officer, represented the Department of Community Health. ██████████, Adult Services Worker (ASW, and ██████████, appeared as witnesses 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 SSI and Medicaid beneficiary who had been receiving HHS. (Testimony)
2. Appellant has been diagnosed with MR and bi-polar disorders Appellant's guardian testified that Appellant has the mental capacity of an ██████ year old. Appellant does not know his address or phone number.
3. Appellant has been on HHS since ██████. During the last year, Appellant was assigned a new ASW.
4. On ██████ the ASW conducted a review without Appellant's guardian present. Progress notes state in part: "...this worker has serious doubts about ██████'s needs for personal care. This worker is familiar with the area

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from other case visits and ██████ is seen walking all over town. He is able to do odd jobs and follow through on them...has no documented physical limitations. He did not indicate to worker that he needs any hands on help with grooming or bathing. This worker questions his bowel issues about how he is able to travel about town all day and did not have a bowel incident. There is no medical documentation that he even has bowel issues other than provider's statement..." (Exhibit A.11)

5. On ██████, 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 as required by new policy.
6. On ██████, MAHS received Appellant's Request for Hearing.

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 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.

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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

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

In this case, the facts indicate that Appellant has been a recipient since ██████████. It appears that this case was assigned a new worker during the last year, who conducted the current assessment. The new worker found that Appellant no longer had ADLs needs; Appellant's guardian disputes this, indicating that he had and continues to have bathing, toileting and grooming needs.

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ASM policy gives workers a large amount of discretion. In fact, an ASW has the authority to overrule a physician's statement regarding the need for care.

At the same time, the ASW is required under policy and evidentiary rules to make determinations based on the evidence and in-person contacts, observations and information collected during the assessment. A worker is expected to be objective, and to document his/her observations and information collected during the home assessment.

It is noted that the record is not clear as to whether the Department had an DHS-54A, or if one was obtained. Clearly, none was included in the evidentiary packet. Testimony on the record is that Appellant's diagnosis is entirely mental—"mental retardation." This is a cognitive impairment. Federal and state law, as documented in ASM policy, clearly allows HHS for a cognitive impairment(s).

In this case, the documentation of the ASW is found on Exhibit A.11 and is summarized in Finding of Fact # 4 above. As noted, the ASW documented that she had "serious doubts", the worker questions the bowel issues as Appellant is seen 'walking and traveling all over town, ...without a bowel incident,' he "has no documented physical limitations", he "did not indicate that he needs any hands on help with grooming or bathing," and there is "is no medical documentation that he even has a bowel issue other than the provider statement."

The worker's observations essentially posit proof that Appellant does not have grooming or toileting issues because she has "serious doubts" that "he is able to travel about town all day and not have a bowel incident." This ALJ does not find 'serious doubts' to be credible and substantial evidence as required under general evidentiary rules.

As to "no documented physical limitations," federal and state well, as indicated in ASM policy, allows HHS for cognitive impairments. One need not have a physical impairment. Mental retardation is a mental/cognitive impairment. Moreover, the provided testified at the administrative hearing that Appellant has a colonoscopy currently scheduled. The ASW seemed to focus on her 'impressions and 'serious doubts.'

As to the worker's notes that the Appellant "did not indicate that he needs any hands on help with grooming or bathing" it is noted that the worker admitted conducting this interview with Appellant outside the presence of his guardian. The ASW indicated that this is not inappropriate and consistent with policy. However, the reality here is that Appellant has a mind of an █ year old boy in a man's body, was in an interview with an adult woman, who was asking him direct questions about his bathroom and toileting needs. And the worker insists that his statement to this adult woman that he does not need assistance with bathroom and grooming needs is to be taken as credible. This forum does not.

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The purview of an administrative law judge (ALJ) is to review the Department's action and to make a determination if those actions are in compliance with Department policy, and not contrary to law. The ALJ must base the hearing decision on the preponderance of the evidence offered at the hearing or otherwise included in the record.

After a careful review of the credible and substantial evidence on the whole records, this ALJ finds that the Department's documentation of its assessment lacked objectivity; the words describing the assessment of this man documenting in her file that she (the ASW's) is "suspicions", and what "appears" to be the case to her is irrelevant. The client has the cognitive ability of an █ year old. To expect him to discuss the intricacies about his toileting to an adult woman, alone with her, and outside the presence of his guardian is patently a situation where an authority figure coupled with a gender issue is highly questionable as to the value and credibility of the disclosures. While the ASW may be entitled to conduct such interviews, this ALJ is not required to find any information obtained under such circumstances credible, particularly when the assessment made is on the grounds that the worker is 'suspicious', and 'doubtful'. Moreover, there is no requirement that an individual have a physical impairment; law and policy indicates that the HHS is available to individuals with cognitive impairments.

This ALJ notes that Appellant may no longer meet the requirements of the HHS program; however, the decision herein finds that the Department's actions are supported by credible and substantial evidence.

For these reasons and for the reasons stated above, the Department's closure is reversed.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED THAT:

The Department's decision is **REVERSED**. The Department is order to reinstate Appellant's HHS case at the prior level, and issue any supplemental benefits to Appellant to which he may be entitled. The Department may conduct a 6 month review.

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

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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.