

**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:

██████████,

Appellant.

Docket No. 2014-35578 HHS

██████████

██████████

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, an in-person hearing was held on ██████████. Appellant's mother/guardian ██████████ appeared and testified on the Appellant's behalf. ██████████, B.S., QIDP, Appellant's Supports Coordinator through ██████████ Community Mental Health and Substance Abuse Services (CMH), also testified for the Appellant. ██████████ Appeals Review Officer, represented the Department of Community Health. ██████████, Adult Services Worker, 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 (DOB ██████████) Medicaid beneficiary. (Testimony).
2. Appellant has been diagnosed with Autism, mental retardation, mood disorder, asthma, and back OCD. (Exhibit A, p. 13).
3. ██████████, Appellant's mother is the Appellant's plenary guardian for a developmentally disabled person. (Exhibit A, p. 6).
4. On ██████████, ██████████ the Appellant's ASW did a face-to-face assessment with just the Appellant to determine Appellant's continued eligibility for HHS. The ASW determined the Appellant was no

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longer eligible for HHS because the Appellant reported he was working at ██████████ and no longer needed assistance with grooming, which essentially had made him eligible for HHS. Appellant specifically stated he did not want his HHS case open because he did not need help with grooming. (Exhibit A, pp. 12, 15 and testimony).

5. On ██████████, the ASW issued an Advance Negative Action Notice to Appellant informing him that his HHS would be terminated effective ██████████, because he did not need assistance with his ADLs. (Exhibit A, pp. 8-10, 12 and testimony).
6. On ██████████, MAHS received Appellant's Request for Hearing. (Exhibit A, pp. 4-7).

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:

Payment Services Home Help

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

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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.

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. [ASM 101, pages 1-3 of 5, emphasis added].

* * *

INTRODUCTION

The DHS-324, Adult Services Comprehensive Assessment, is the primary tool for determining need for services. The comprehensive assessment must be completed on **all open independent living services cases**. ASCAP, the automated workload management system, provides the format for the comprehensive assessment and all information must be entered on the computer program.

Requirements

Requirements for the comprehensive assessment include, but are not limited to:

- A comprehensive assessment will be completed on all new cases.
- A face-to-face contact is required with the client in his/her place of residence.
- The assessment may also include an interview with the individual who will be providing home help services.
- A new face-to-face assessment is required if there is a request for an increase in services before payment is authorized.
- A face-to-face assessment is required on all transfer-in cases before a payment is authorized.
- The assessment must be updated as often as necessary, but **minimally** at the six month review and **annual** redetermination.

* * *

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

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- 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.

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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 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. [ASM 120, pages 1, 2-3 of 7, emphasis added].

Adult Services Manual 121 (5-1-2013) (hereinafter "ASM 121") sets forth the Functional Assessment Definitions and ranks for the HHS program. ASM 121 provides the following definition for "Grooming":

Grooming - Maintaining personal hygiene and a neat appearance; including the combing/brushing of hair; brushing/cleaning teeth, shaving, fingernail and toenail care. [p. 2 of 6].

Adult Services Worker (ASW) [REDACTED] stated on [REDACTED] Appellant's ASW [REDACTED] he did a face-to-face assessment with just the Appellant to determine Appellant's continued eligibility for HHS. ASW [REDACTED] stated during the face-to-face, the Appellant advised ASW [REDACTED] he was working at [REDACTED] he did not need any help with grooming; and, he did not want his HHS case open. ASW [REDACTED] stated on [REDACTED] ASW [REDACTED] sent out an Advance Negative Action Notice to the Appellant informing him that his HHS would be terminated effective [REDACTED], because he did not need assistance with his ADLs.

ASW [REDACTED] stated ASW [REDACTED] was a new ASW on the Appellant's case. ASW [REDACTED] stated the documents contained in Exhibit A did not indicate that Appellant's guardian was sent a notice of the home visit that took place on [REDACTED] ASW Atkinson was not aware of any policy regarding the presence of the client's guardian at a reassessment. ASW did note that [REDACTED], Appellant's Supports Coordinator with CMH was present at the Appellant's previous reassessment. The notes in Exhibit A show that [REDACTED] was at the two prior reassessments on [REDACTED] and [REDACTED]. ASW [REDACTED] stated that he believed the Appellant's guardian should be given notice of a home visit for a reassessment.

During the hearing, the Appellant's witnesses established that they did not learn of the home visit for the reassessment or redetermination until after they found the Advance Action Notice in the Appellant's apartment that terminated his HHS. Appellant's mother/guardian testified she was the Appellant's plenary guardian and that she had advised DHS that they needed to have her or the Appellant's CMH worker present for

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all reassessments or redeterminations. They indicated the Appellant's level of care has not changed since his previous assessments. Appellant's witnesses stated the Appellant over estimates his abilities due to his mental incapacity and he does need hands on assistance with grooming tasks such as occasional assistance with shaving and hands on assistance with finger nail and toe nail care.

The preponderance of reliable evidence in this case demonstrates that the ASW did not provide notice to the Appellant's plenary guardian of the home visit conducted on ██████████. Neither the Appellant's guardian nor his CMH worker was present for the reassessment. The credible evidence in this case demonstrates that the Appellant is diagnosed with Autism and mental retardation and is not capable of giving a reliable assessment of his capabilities. Appointment of a plenary guardian for a developmentally disabled person results from a finding that the individual is totally without capacity to care for himself, and places a duty on the guardian to make provisions for the ward's care and maintenance. See MCL 330.1618(5) & MCL 330.1631(1)(b). Accordingly, I find that the ASW did not conduct a proper reassessment or redetermination of the Appellant's continued eligibility for HHS without notifying the Appellant's guardian and providing an opportunity for the guardian or her representative to be present for the home visit. Accordingly, the Department's decision to terminate Appellant's HHS must be reversed.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department did not properly terminated Appellant's HHS.

IT IS THEREFORE ORDERED THAT:

The Department's must initiate a new determination of the Appellant's eligibility for the Home Help Services program.


William D Bond

William D. Bond
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Community Health

Date Signed: ██████████

Date Mailed: ██████████

WDB/db


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cc:



***** 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.