

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES
P.O. Box 30763, Lansing, MI 48909
Phone: (517) 335-3997; Fax: (517) 373-4147

IN THE MATTER OF:

██████████
Appellant.

Docket No. 15-001542-HHS
Case No.: ██████████

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 April 1, 2015. Appellant appeared and testified on her own behalf. ██████████ ██████████, Appeals Review Officer, represented the Department of Community Health (DCH or Department). ██████████ ██████████, Adult Services Specialist, and ██████████, Adult Services Supervisor, from the Wayne County Department of Human Services (DHS) testified as witnesses for the Department.

ISSUE

Did the Department properly suspend payment for Home Help Services (HHS) due to non-receipt of completed provider logs?

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 47-year-old Medicaid beneficiary who has been diagnosed with metastatic breast cancer, high cholesterol, rosacea, acne and vitiligo. (Exhibit A, page 10).
2. Appellant had been receiving HHS in the amount of 41 hours and 51 minutes per month, with a total monthly care cost of \$275.69. (Exhibit A, page 13).
3. Specifically, assistance was authorized for the tasks of bathing, housework, laundry, shopping, and meal preparation. (Exhibit A, page 13).
4. On December 10, 2014 the Department sent the Appellant an Advance Negative Action Notice effective December 26, 2014 informing her that payment for HHS would be suspended pending the receipt of completed provider logs. The

Department had not received provider logs for the third quarter, (July, August and September 2014).

5. On December 7, 2014 the Department sent the Appellant an appointment letter scheduling an appointment for December 15, 2014 to complete a 6 month review. Exhibit A, Page 5.
6. On January 24, 2015 the Department sent the Appellant an Advance Negative Action Notice effective February 6, 2015 informing her that HHS would be terminated based on the policy requiring a rating of 3 or higher in an activity of daily living (ADL) in order to keep the case open.
7. At the hearing the Department also stated that no logs had been received for the entire year of 2014. Notwithstanding no completed logs being received, the Department has paid for HHS for the entire year through December 31, 2014. No logs had been received as of the date of the hearing for the third quarter. Exhibit A, Page 15.
8. Specialist ██████████ could not say that she sent provider logs to Appellant for the 4th quarter and would have sent the 3rd quarter logs to a different specialist assigned to the case during that period.
9. A Medical Needs Form DHS 54A was received by the Department on December 27, 2014 indicating that Appellant needed help with grooming. Exhibit A, Page 14.
10. At the home visit ██████████ testified that Appellant informed her that she did not need assistance with bathing or medications, and was observed in the home being mobile, but did need assistance with housekeeping, laundry, meal preparation and shopping and errands. No ADL was rated at 3 or above.
11. On February 10, 2015 the Michigan Administrative Hearing System (MAHS) received the request for hearing file by Appellant in this matter. 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.

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 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 no longer has such a need in this case and was therefore ineligible to receive HHS. That decision was based on information obtained directly from Appellant's doctor and ██████████' observations and discussion with Appellant during the home visit. Appellant has previously been receiving assistance with the ADL of bathing only and her doctor had indicated in previous medical need forms that Appellant had such a need. The most recent medical needs form submitted by the Appellant in conjunction with the current six month

assessment only identified a need for assistance grooming and assistance with IADLs. Exhibit A, Page 14. ██████ testified that the only change which occurred was bathing based upon her assessment and bathing was eliminated. The Appellant advised ██████ that she needed no help with bathing and did not use any adaptive equipment. She also reviewed with the Appellant the DHS 324, a form which reviewed the prior assessment. Also the Claimant was able to lift her left arm. The Appellant testified that she was right handed and that she could bathe herself but could not wash herself. The Assessment took 20 to 25 minutes. Although the medical needs form indicated grooming assistance was necessary, the assistance with grooming was not sustained by the evidence presented in the record.

Appellant bears the burden of proving by a preponderance of the evidence that the Department erred in terminating her HHS. Here, the only ADL in dispute is bathing and, with respect to that task, Adult Services Manual 121 (5-1-2013), page 1 of 6, states:

Bathing - helping with cleaning the body or parts of the body using a tub, shower or sponge bath; including getting a basin of water, managing faucets, soaping, rinsing and drying. helping shampoo hair.

- 1 No assistance required.
- 2 Bathes self with direction or intermittent monitoring. May need reminding to maintain personal hygiene.
- 3 Minimal hands-on assistance or assistive technology required to carry out task. Generally bathes self but needs some assistance with cleaning hard to reach areas; getting in/out of tub/shower. Client is able to sponge bath but another person must bring water, soap, towel. Client relies on a bath or transfer bench when bathing. The constant presence of another is not required.
- 4 Requires direct hands-on assistance with most aspects of bathing. Would be at risk if left alone.
- 5 Totally dependent on others for all areas of bathing.

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

No assistance required.

- 2 Grooms self with direction or intermittent monitoring. May need reminding to maintain personal hygiene.

- 3 Minimal hands-on assistance required. Grooms self but needs some assistance with activities of personal hygiene.
- 4 Requires direct hands-on assistance with most aspects of grooming. Would be at risk if left alone.
- 5 Totally dependent on others in all areas of grooming.

The Appellant's doctor's Medical Needs Assessment completed December 27, 2014 also certified that the Appellant needed assistance with grooming. Exhibit A, Page 14.

Given the above definitions and the evidence in this case, Appellant has failed to meet her burden of proof and the Department's decision must be affirmed. It is undisputed that Appellant was capable of bathing herself; she no longer had cancer, had no bathing equipment and could lift both arms. Originally, due to side effects of breast cancer Claimant had difficulty with raising her left arm, but she testified she could now lift her left arm but not over her head. During the in-home Assessment, Grooming was not mentioned by Appellant as an area of need for assistance or noted in the ██████████ notes during the assessment.

Accordingly, Appellant failed to meet her burden of proof and the Department's decision must be sustained with regard to the Department's decision to terminate Home Health Services.

The Department also suspended the Appellant's HHS payments due to failure to receive completed provider logs by Advance Negative Action Notice dated December 10, 2014 which at that time was issued for failure to receive 3rd quarter logs; however, the Department had paid services through December 31, notwithstanding its failure to receive logs. The Appellant testified that she had provided logs sometime in the summer and also provided logs when they were sent to her; however, she had no proof that she sent the logs and could not say exactly when they were sent. At the hearing the Department testified that they had received no completed logs for the entire 2014.

PERSONAL CARE SERVICES PROVIDER LOG (DHS-721)

- Each individual provider must keep a log of home help services delivered. The DHS- 721 is used for this purpose.
- Tasks on the provider logs are automatically marked with an X when printed from ASCAP based on the client's home help functional assessment.
- The provider must indicate what services were provided and on which days of the month.
- The client and the provider must sign the log when it is completed to verify that the services approved for payment were delivered.

- The log must be submitted to the local office quarterly. Provider logs must be received within 10 business days after the last service date on the log. Failure to do so will result in suspension of payment.
- The adult services specialist must initial and date the log upon receipt, demonstrating review of the log.
- Retain the log in the client's case record.
- A separate log is required for each provider.
- Incomplete logs must be returned to the client/provider for completion.

ASM 135, Page 4 and 5 of 9.

In this case the Appellant bears the burden of proof to demonstrate that completed provider logs for the 3rd quarter were provided. Notwithstanding the Appellant's testimony that she provided completed logs when they were sent to her, no completed provider logs were in her file for the 3rd quarter. The Appellant also could not say when exactly the logs were submitted by her except sometime in the summer. Additionally Appellant did not contact the Department after receiving the Advance Negative Action Notice suspending payment for failure to receive completed logs, to rectify the situation. Based upon the evidence presented, it is determined that the completed provider logs were not received for the 3rd quarter and thus the action of the Department and the issuance of the Advance Negative Action Notice Dated December 10, 2014 suspending payments for services was in accordance with Department policy. Thus it is found that the Appellant did not meet her burden of proof. The Appellant of course may submit any missing completed logs so that her case file is complete and the Department's payments are substantiated for the 3rd quarter. Although the Department through ██████████ testified that no logs were received for 2014, at the time of the December 10, 2014 Advance Negative Action Notice only the 3rd quarter logs were at issue therefore this Decision does not cover any other quarter of 2014.

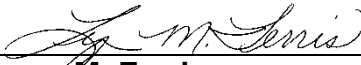
DECISION AND ORDER

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

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly issued an Advance Negative Action Notice which suspended payment for HHS services due to failure to receive completed provider logs for the 3rd quarter.

IT IS THEREFORE ORDERED THAT:

The Department's decision is **AFFIRMED**



Lynn M. Ferris
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Health
and Human Services

Date Signed: April 30, 2015

Date Mailed: April 30, 2015

LMF/cl

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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.