

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES
P.O. Box 30763, Lansing, MI 48909
(517) 335-2484; Fax: (517) 373-4147

IN THE MATTER OF:

██████████,

Appellant.
_____ /

Docket No. 15-007729 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 Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. Appellant appeared and testified on her own behalf. ██████████, Appellant's provider; ██████████; Appellant's mother; and ██████████, Appellant's sister; also testified as witnesses for Appellant. Thomas Young, Appellant's son, was present during the hearing, but did not participate. ██████████, Appeals Review Officer, represented the Department of Health and Human Services (DHHS or Department). ██████████, Adult Services Worker (ASW), and ██████████, Adult Services Supervisor, testified as witnesses for the Department.

ISSUE

Did the Department properly deny Appellant's request for additional Home Help Services (HHS)?¹

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 ██████████ beneficiary who has been diagnosed with seizure disorder; bradycardia; hypertension; fainting spells; and dizziness. (Exhibit A, page 10).
2. Appellant applied for HHS and, on ██████████ ASW l James performed an intake/home visit. (Exhibit A, page 10).
3. At the time of the home visit, Appellant was pregnant. (Exhibit A, page

¹The Department also sent an advance notice of termination in this case, but now acknowledges that that the notice was sent in error. The parties also confirmed that, while payments stopped, they have been restarted and that the sole issue on appeal is the denial of additional HHS.

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- 10).
4. During that home visit, Appellant reported a need for assistance with a number of Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADLs). (Exhibit A, page 10; Testimony of Appellant; Testimony of ASW Ijames).
 5. It was also noted that Appellant lived in shared household with her care provider. (Exhibit A, page 10).
 6. Following the home visit, ASW [REDACTED] ranked Appellant in all ADLs and IADLs. (Exhibit A, pages 13-14).
 7. As part of the rankings, ASW [REDACTED] ranked Appellant a “3” in housework, laundry, shopping and meal preparation after finding that she needed assistance with all aspects of those tasks and was totally dependent on her provider. (Exhibit A, pages 13-14; Testimony of ASW Ijames).
 8. ASW [REDACTED] subsequently approved Appellant for 50 hours and 47 minutes of HHS per month, with a total monthly care cost of \$685.96. (Exhibit A, page 15).
 9. Specifically, HHS were authorized for assistance with the tasks of bathing, grooming, dressing, toileting, taking medications, housework, laundry, shopping, and meal preparation. (Exhibit A, page 15).
 10. On [REDACTED], the Michigan Administrative Hearing System (MAHS) receive the request for hearing in this matter regarding the number of hours that were approved. (Exhibit A, pages 4-6).

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

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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

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

- 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

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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

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

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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

Here, as discussed above, the Department approved Appellant for 50 hours and 47 minutes of HHS per month, with a total monthly care cost of \$[REDACTED]. Specifically, HHS were authorized for assistance with the tasks of bathing, grooming, dressing, toileting, taking medications, housework, laundry, shopping, and meal preparation.

Appellant now asserts that additional HHS should have been approved and, in this administrative hearing, she bears the burden of proving by a preponderance of the evidence that the Department erred in denying additional HHS.

Given the testimony and exhibits in this case, the bulk of the additional services sought by Appellant would not be covered by HHS. Appellant and her witnesses all testified that Appellant has a need for constant monitoring due to his seizure disorder, but the above policy specifically provides that assistance such as supervising and monitoring are not covered by HHS.

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However, while the majority of the additional services sought by Appellant would not be covered, it is also clear that the Department erred in other areas; its decision must be reversed; and Appellant's HHS must be reassessed.

For example, while ASW Ijames both testified and wrote in the justifications for the rankings in this case that Appellant needed assistance with all aspects of housework, laundry, shopping and meal preparation and that she was totally dependent on her provider in those tasks, the ASW also mistakenly only ranked Appellant a "3" in those areas. Per policy, Appellant should have been ranked a "5" given the specific findings that Appellant is dependent on others and does not perform the tasks. ASW Ijames herself even confirmed during the hearing that the rankings were an error.

Moreover, while some of those rankings were harmless errors given that Appellant was still subsequently approved for the maximum amount of assistance allowed for housework and the prorated maximum amount of assistance allowed for meal preparation, ASW Ijames based the assistance authorized for laundry and shopping on the recommended times for rankings of "3" in those two tasks. Consequently, the amount of assistance authorized for laundry and shopping are clear errors.

Given the clear errors, the Department's decision must be reversed and it must initiate a reassessment of Appellant's HHS.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that, the Department improperly denied Appellant's request for additional HHS.

IT IS THEREFORE ORDERED THAT:

The Department's decision is **REVERSED** and it must initiate a reassessment of Appellant's HHS.

Steven Kibit

Steven J. Kibit
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Health and Human Services

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

[REDACTED]

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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.