

**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:

████████████████████

Docket No. 15-008596 HHS

██████████

██████████

Appellant.

_____ /

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 telephone hearing was held on ██████████ ██████████ ██████████ represented Appellant. ██████████ Appellant's mother, and ██████████, Appellant's father, also testified as witnesses for Appellant. Appellant was present for the hearing, but did not participate. ██████████, Appeals Review Officer, represented the Respondent Department of Health and Human Services (DHHS or Department). ██████████, Adult Services Worker (ASW), also testified as a witness for the Department.

ISSUE

Did the Department properly reduce 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 has been diagnosed with mental retardation; arrested hydrocephalus; obsessive compulsive disorder; and seizures. (Exhibit A, pages 7, 9).

¹ Appellant's request for hearing also indicated that Appellant and his representative were requesting an in-person hearing, which Appellant has a right to. However, the matter was mistakenly scheduled as a telephone hearing. Given the mistake, the undersigned Administrative Law Judge offered to adjourn and reschedule the matter as an in-person hearing, but Appellant's representative elected to proceed with the telephone hearing as scheduled.

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2. Appellant was previously authorized for HHS through the Department in the amount of █████ hours and █████ minutes per month, with a total monthly care cost of █████. (Exhibit A, page 9).
3. Specifically, HHS were authorized for assistance with the tasks of bathing, grooming, dressing, toileting, eating, taking medications, housework, laundry, shopping, meal preparation, and mobility. (Exhibit A, page 13).
4. With respect to the task of mobility, assistance was authorized in the amount of █████ minutes per day, █████ days a week █████ per month). (Exhibit A, page 13).
5. On █████, ASW █████ conducted the yearly review of Appellant's services with Appellant, Appellant's father/home help provider, and Appellant's mother in their home. (Exhibit A, page 11).
6. During that review, Appellant briefly walked out of his room █████ and, each time he did so, he was holding onto a wall for support. (Exhibit A, page 11; Testimony of Appellant's mother; Testimony of ASW █████).
7. Appellant's mother or father also reported that Appellant does not require any hands-on, physical assistance from another person with mobility and he is able to walk on his own by holding onto a wall or other objects for support. (Exhibit A, page 11; Testimony of ASW █████).
8. Based on that report, ASW █████ determined that, while Appellant should remain ranked a "3" with respect to the task of mobility, HHS should no longer be approved for assistance with that task. (Exhibit A, page 11; Testimony of ASW █████).
9. On █████, ASW █████ sent Appellant written notice stating that his HHS payments would be "suspended" effective █████. (Exhibit A, page 5).
10. While the notice stated that Appellant's services were to be suspended, that was a mistake as ASW █████ only intended to reduce his services by removing assistance with mobility. (Testimony of ASW █████).
11. Regarding the reason for the action, the notice also stated:

During the review, it was reported the client holds the wall or other objects to walk and doesn't require direct hands on care from the provider. Mobility removed as an approved task.

Exhibit A, page 5

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12. On ██████████ the reduction took effect and Appellant's HHS were reduced to ██████ hours and █████ minutes per month, with a total monthly care cost of ██████ (Exhibit A, pages 13-14, 16).
13. The only change in services was the removal of assistance with mobility. (Exhibit A, pages 13-14).
14. On ██████████ the Michigan Administrative Hearing System (MAHS) received the request for hearing filed in this matter. (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 statutes, 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 HHS and how such services are assessed.

For example, ASM 101 provides in part:

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 [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 would include such items as walkers, wheelchairs, canes, reachers, lift chairs, bath benches, grab bars and handheld showers.

* * *

Services not Covered by Home Help

- 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 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 of 5

Moreover, ASM 120 states in part:

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

Here, Appellant's need for HHS is not disputed and he has continually been authorized such services. However, the Department has also reduced Appellant's HHS by removing assistance with mobility. In support of that decision, ASW ████████ testified that, based on reports that Appellant does not require any hands-on assistance from another person with mobility and that he is able to walk on his own by holding onto a wall or other objects for support, Appellant should remain ranked a "3" with respect to the task, but HHS should no longer be approved for assistance with mobility as no covered assistance is provided by the enrolled home help provider.

In response, Appellant's mother testified that, while Appellant does hold onto walls or other objects for support when walking, he also needs hands-on assistance from her or his father at times, particularly when getting to the bathroom or getting out of the door. Appellant's mother also testified that she does not recall if she or Appellant's father informed ASW ████████ about the times Appellant needs such assistance and that she may have just said that he does not need assistance when walls are there. Appellant's mother further testified that Appellant has fallen once before.

Appellant bears the burden of proving by a preponderance of the evidence that the Department erred in reducing his HHS. Moreover, the undersigned Administrative Law Judge must review the Department's decision in light of the information available at the time the decision was made.

Here, the only task in dispute is mobility and, with respect to mobility, Adult Services Manual 121 (5-1-2013), page 4 of 6, states:

Mobility - Walking or moving around inside the living area, changing locations in a room, assistance with stairs or maneuvering around pets, or obstacles including uneven floors.

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- 1 No assistance required even though the client may experience some difficulty or discomfort. Completion of the task poses no risk to safety.
- 2 Client is able to move independently with only reminding or encouragement. For example, needs reminding to lock a brace, unlock a wheelchair or to use a cane.
- 3 Minimal hands-on assistance required for specific maneuvers with a wheelchair, negotiating stairs or moving on certain surfaces. Without the use of a walker or pronged cane, client would need physical assistance.
- 4 Requires direct hands-on assistance with most aspects of mobility. Would be at risk if left alone.
- 5 Totally dependent on other for all mobility. Must be carried, lifted or pushed in a wheelchair or gurney at all times.

Given that definition, the above policies and the evidence in this case, Appellant has failed to meet his burden of proof and the Department's decision must be affirmed.

It is undisputed in this case that ASW ██████████ observed and Appellant's mother or father reported that Appellant uses walls or other objects for support when walking around the home. However, while such behavior justifies a ranking of "3" for mobility, given Appellant's use of assistive technology, it is not the direct hands-on assistance from the enrolled home help provider that the Department will pay for.

Moreover, while Appellant's mother also testified during the hearing that Appellant does occasionally need such hands-on assistance, she was not clear on what they told ASW ██████████ and the undersigned Administrative Law Judge finds ASW ██████████ contemporaneous notes and subsequent testimony to be credible as to what needs were actually reported during the home visit. Based on those notes and testimony, Appellant's family did not report any need for covered hands-on assistance with mobility.

The undersigned Administrative Law Judge must review the Department's decision in light of the information available at the time the decision was made and, given what was reported here, the Department's decision must be affirmed.

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DECISION AND ORDER

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

IT IS THEREFORE ORDERED THAT:

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

Steven Kibit

Steven Kibit

Administrative Law Judge

For Nick Lyon, Director

Michigan Department of Health and Human Services

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

SK/db

cc: [REDACTED]

***** 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.