

**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. 15-000134 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 the Appellant's request for a hearing.

After due notice, an in-person hearing was held on ██████████. Appellant appeared and testified on her own behalf. ██████████, Appeals Review Officer, represented the Department of Health and Human Services (DHHS or Department). ██████████ Independent Living Services Specialist, and ██████████, Adult Services Supervisor, testified 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 Medicaid beneficiary who has been diagnosed with back pain, hypothyroidism, hypertension, and shoulder pain. (Exhibit A, pages 13, 16).
2. Appellant had been receiving HHS in the amount of ██████ hours and ██████ minutes per month, with a total monthly care cost of ██████ (Exhibit A, page 17).
3. Specifically, assistance was authorized for the Activities of Daily Living (ADLs) of bathing and dressing, and the Instrumental Activities of Daily Living (IADLs) of housework, laundry, shopping, and meal preparation. (Exhibit A, page 17).

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4. On [REDACTED], [REDACTED] conducted a home visit with Appellant and Appellant's provider. (Exhibit A, page 15).
5. During that visit, Appellant reported that she needed the same assistance she had been getting. (Testimony of Appellant; Testimony of [REDACTED]).
6. Boynton also observed Appellant walking and transferring independently, and without the use of any adaptive equipment. (Testimony of [REDACTED]).
7. Boynton requested during the home visit that Appellant submit a new medical needs form certifying a need for personal care services. (Exhibit A, page 15).
8. On [REDACTED] also sent Appellant written notice that her services would be suspended, effective [REDACTED], until the new medical needs form was submitted by that date. (Exhibit A, pages 5-7).
9. On [REDACTED], [REDACTED] received [REDACTED] medical needs forms. (Testimony of Appellant; Testimony of [REDACTED]).
10. In one of the forms, the doctor circled the IADLs of taking medications, housework, laundry, shopping, and meal preparation when asked to certify that Appellant had a medical need for personal assistance with personal care activities. (Exhibit A, page 16).
11. The other form was exactly like the first in all respects, except that the ADL of bathing was also circled. (Exhibit B, page 1).
12. On [REDACTED] telephoned Appellant's doctor's office regarding the [REDACTED] forms. (Exhibit A, page 15; Testimony of [REDACTED]).
13. A receptionist at the office then informed her that the doctor had only circled the IADLs. (Exhibit A, page 15; Testimony of [REDACTED]).
14. The receptionist also resent the form the doctor's office had, which was the form with only the IADLs circled. (Exhibit A, page 15; Testimony of [REDACTED]).
15. On [REDACTED], the Department sent Appellant written notice that her HHS would be terminated, effective [REDACTED], because, based on the last review and information received from Appellant's doctor, she did not need any hands on assistance with any ADLs. (Exhibit A, pages 8-10).
16. On [REDACTED] the Michigan Administrative Hearing System (MAHS) received the request for hearing 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.

* * *

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 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 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.

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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

As described in the above policies, 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.

In this case, the Department terminated Appellant's HHS on the basis that Appellant did not have a need for assistance with any ADLs at a level 3 or greater on the functional scale. Specifically, while Appellant was previously ranked a "3" in the ADLs of bathing and dressing, ██████████ found that the ranking was no longer proper after observing Appellant walking and transferring independently, *i.e.* without the use of adaptive equipment or the assistance of another person, and clarifying her need for assistance with Appellant's doctor's office. Specifically, ██████████ testified that she received two medical needs forms and, after telephoning Appellant's doctor's office, she learned that only the form where just IADLs were circled had been signed by the doctor.

In response, Appellant testified that there were ██████ medical needs forms sent, but the first form, the one with just the IADLs circled, had been sent in error and the doctor then circled bathing and resent it. Appellant also testified that the doctor who completed the form was her regular doctor's partner, and was not familiar with her case. Appellant further testified that she informed ██████████ during the home visit that she continued to need assistance with all the tasks identified on her previous medical needs form, which she believed included the ADLs of bathing, grooming, dressing, and mobility.

Appellant bears the burden of proving by a preponderance of the evidence that the Department erred in terminating her HHS. Moreover, the undersigned Administrative Law Judge is limited to reviewing the Department's decision in light of the information available at the time the decision was made.

Here, given the evidence and testimony presented, the undersigned Administrative Law Judge finds that Appellant has failed to meet her burden of proof and that the Department's decision must therefore be affirmed. While the parties seem to dispute when and how the medical needs form were submitted, it is undisputed that ██████, conflicting medical need forms were submitted the same day. ██████████ was therefore justified in contacting Appellant's doctor's office in order to resolve that conflict and, in doing so, she learned that the doctor only identified a need for assistance with IADLs. Moreover, while Appellant testified that the doctor was unfamiliar with her case, the

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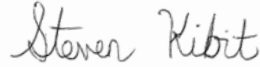
Department was justified in relying on the information submitted. Additionally, while the medical needs form is not dispositive, it did corroborate [REDACTED] observations during the home visit regarding Appellant's physical abilities and her lack of need for assistance with ADLs.

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.

IT IS THEREFORE ORDERED THAT:

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



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.