

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. 15-001539-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, an in-person hearing was held on April 1, 2015. Appellant appeared and testified on his 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 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. The Appellant is a ██████████ Medicaid beneficiary who has been diagnosed with lumbar disc herniation and bulge, hypertension and surgical fusion of his neck. Exhibit A, page 10.
2. Appellant had been receiving HHS in the amount of 32 hours and 53 minutes per month, with a total monthly care cost of \$268.09. Exhibit A, page 12.
3. Specifically, assistance was authorized for the tasks of bathing, housework, laundry, shopping and meal preparation. Exhibit A, page 12.
4. On January 26, 2015 the Department Specialist ██████████ completed an in-home visit and reassessment during which she assessed the Claimant.
5. ██████████ re-assessment notes indicate, "Client reports he is able to get in and out of the tub for both showers and baths. He has no issue with washing his body." Exhibit A, p.10-11.

6. Pursuant to the annual re-assessment, ██████████ prepared notes based upon her observations. The notes indicate that the Claimant had no issues with ambulating, transferring around the home, was able to bend from a standing position to pick up medication bottles that had dropped with no issue. "Client reports he is able to complete all his personal care unassisted. Client states he is able to get in and out of the shower/bath with no assistance. Client states sometimes when he sits in the bathtub he might need some assistance to get up but he's able to get in and out of shower without any assistance." Exhibit A, page 13.
7. The Appellant provided a Medical Needs Form to the Department dated January 26, 2015 which ██████████ said she considered when making the Assessment. Exhibit A, Page 6.
8. The Department issued an Advanced Negative Action Notice on January 28, 2015 advising the Claimant that his Home Help Services would be terminated effective February 11, 2015 because the Claimant did not demonstrate a need for hands-on services of at least one Activity of Daily Living (ADL) based upon the policy requiring a rating of 3 or higher and therefore Claimant was no longer eligible for HHS. Exhibit A, page 5.
9. The Appellant requested a hearing on February 10, 2015 protesting the termination of HHS benefits.

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.

Necessity For Service

The adult services specialist is responsible for determining the necessity and level of need for home help services based on all of the following:

- ☐ Client choice.

A completed DHS-324, Adult Services Comprehensive Assessment. 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 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 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

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 or 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.

Verification of the client's medical need by a Medicaid enrolled medical professional via the DHS-54A. The client is responsible for obtaining the medical certification of need; see ASM 115, Adult Services Requirements. *ASM 105 (4/1/15) Pages 3 and 4*

The medical professional certifies that the client's need for service is related to an existing medical condition. **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.

ASM 115, Pages 1 and 2 of 3

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 Ferguson's observations during the home visit. Appellant has previously been receiving assistance with the ADL of bathing as his doctor had indicated in previous Medical Need Forms that Appellant had such a need. The most recent Medical Needs Form which was not provided to ██████████ at the time of the assessment did identify a need for assistance with bathing with the remainder of the assistance identifying a need for assistance with IADLs. ██████████ testified that she considered the Medical Needs Form. Moreover, ██████████ also observed Appellant walking and bending to pick up a medication bottle he had dropped with no problems at the home visit, and he was not using any adaptive equipment, which further demonstrated to ██████████ that that Appellant could get in and out of the bathtub on his own.

During the assessment the notes indicate and ██████████ testified that Appellant told her he could get in and out of the bath/shower without assistance.

At the hearing the Appellant testified that his back problems were dependent on the weather and caused him more trouble when it was cold, and being outside in cold weather. He further testified that he had good days and bad days. The Claimant confirmed at the hearing he could get in and out of the shower most of the time by himself, and on the day of the hearing he could have gotten in and out of the shower. The only time the Appellant might require assistance was sometimes when he sits in the bathtub he might need some assistance to get up but is able to get in and out of the shower without any assistance. Exhibit A, page 13.

Appellant bears the burden of proving by a preponderance of the evidence that the Department erred in terminating his 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.

Given the definition in paragraph 1 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 that Appellant was walking and bending independently and was able to bend from a standing position to pick up medication he dropped during the home visit and, while Appellant reported a need for assistance with getting in and out of the shower/bathtub, he did testify that he had good days and bad days but that most of the time he did not require such assistance. Based upon this testimony a rating for Bathing of 1 by the Specialist is supported by the evidence and testimony presented by the parties. In addition, the testimony of ██████████ substantiated a thorough evaluation during the assessment, including a review of the DHS 54 A completed by the Claimant's doctor. The DHS 54 A does not serve to prescribe or authorize personal care services. Needed services are determined by the comprehensive assessment conducted by the

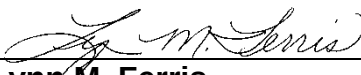
Adult Services Specialist. Accordingly, Appellant failed to meet his burden of proof and the Department's decision must be sustained.

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**.



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

Date Signed: April 30, 2015

Date Mailed: May 1, 2015

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CC:

[REDACTED]
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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.