

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES
P.O. Box 30763, Lansing, MI 48909
Phone: (877)-833-0870; Fax: (517) 373-4147

IN THE MATTER OF:

██████████
Appellant
_____ /

Docket No. 15-001544-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. The Appellant's Guardian, ██████████, also appeared. A witness, ██████████ ylor, the Appellant's Clinical Therapist, also appeared. ██████████, Appeals Review Officer, represented the Department of Community Health (DCH or Department). ██████████, Adult Services Supervisor, and ██████████ ██████████, Adult Services Specialist, from the Wayne County Department of Human Services (DHS) testified as witnesses for the Department.

ISSUE

Did the Department properly deny the Appellant's Home Help Services (HHS) application?

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 cognitive impairment. Exhibit A, Page 14.
2. The Appellant's doctor completed a DHS 54A, Medical Needs Form, and indicated that the Appellant needed assistance with meal preparation, shopping, laundry and housework. The doctor did not indicate any need for any of the Activities of Daily Living (ADL) including Eating, Toileting, Bathing, Grooming, Dressing, Transferring and Mobility. Exhibit A, page 14.
3. The Appellant applied for HHS and an in-home assessment was conducted on November 7, 2014 by the caseworker, ██████████. Exhibit A, page 13.
4. The completed assessment performed by ██████████ did not find Appellant needed assistance with any Activity of Daily Living. Exhibit A, page 12.

5. ██████████ notes indicate that Appellant was able to wash without assistance, and noted that Appellant can complete certain tasks independently with a reminder. “Client could bathe herself but might at times have the water too hot.” The Guardian advised ██████████ that Appellant can do most things independently, can wash her hair but, for the most part, goes to the salon. The Appellant is capable of dressing herself but requires monitoring to make sure the clothes are on right. All the ADLs were rated a number 1 except for bathing which was rated a number 2. Exhibit A, page 12.
6. The Department issued an Advanced Negative Action Notice on January 21, 2015 following her assessment review denying the application based on the policy requiring a rating of 3 or higher in an Activity of Daily Living. Exhibit A, page 6-7.
7. On February 10, 2015 the Michigan Administrative Hearing System (MAHS) received the request for hearing filed by Appellant’s Guardian on her behalf in this matter. Exhibit A, page 4-5.

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.

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 additional testimony indicated a dispute with Gulley's rating for Dressing and Grooming. With respect to Bathing, Grooming and Dressing, 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.

1. 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.

Dressing - Putting on and taking off garments; fastening and unfastening garments/undergarments, assisting with special devices such as back or leg braces, elastic stockings/garments and artificial limbs or splints.

1. No assistance required.
2. Client is able to dress self but requires reminding or direction in clothing selection.
3. Minimal hands on assistance or assistive technology required. Client unable to dress self completely (i.e. tying shoes, zipping, buttoning without the help of another person or assistive
4. Requires direct hands on assistance with most aspects of dressing. Without assistance would be inappropriately or inadequately dressed.
5. Totally dependent on others in all areas of dressing.

The Appellant's doctor's Medical Needs Assessment completed ██████████ did not certify any ADLs as requiring need for assistance. Exhibit A, Page 14.

The Appellant's Guardian testified that the Appellant could bathe herself but required monitoring with the water temperature as she turns on the water to scalding at times. As regards dressing, the Appellant's Guardian testified that Appellant could dress herself but often put her clothes and shoes on the wrong way. The Guardian indicated that she did not lay out Appellant's clothes and Appellant tied her shoes but not the way she should, has to be reminded to tie her shoes and ties her shoes in her own way. The testimony of the Guardian was unclear as to whether the Appellant could tie her shoes answering, "No, not really." As regards grooming, the Guardian testified that Appellant could comb through her hair and the notes indicate the Appellant goes to a salon. The Appellant's therapist testified that the Appellant cannot put product in her hair and cannot keep it neat. At the in-home assessment the Appellant's hair was in a ponytail and was neat.

The Department witness ██████████ testified that she rated the Appellant a 2 in bathing due to the fact that she did need monitoring with the temperature of the water, and thus acknowledged that she needed intermittent monitoring.

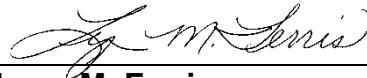
Given the above definitions and the evidence in this case, Appellant has failed to meet her burden of proof and the Department's decision must be affirmed. It is undisputed that Appellant was capable of bathing herself; Appellant could comb her hair and could dress herself. The Department witness ██████████ also testified that she was told that the Appellant was capable of washing her hair. The Appellant's doctor did not certify assistance with ADLs. During the in-home assessment, Grooming was not mentioned by Appellant as an area of need for assistance or noted in ██████████ notes other than to indicate that the Appellant could comb her hair and went to a salon. Lastly, the Appellant's Clinical Therapist also testified as to the Appellant's clinical cognitive assessment and noted that she was moderately cognitively impaired. The Therapist further testified that for the categories of bathing, dressing and grooming she rated Appellant between a 2 and 3. On grooming the therapist gave an opinion that Appellant could comb her hair but may not make it neat and needed help with putting in products for her hair and that, in her opinion, Appellant would be either a 2 or a 3. The Therapist further testified and that she would not rate her a 3 in all these areas, but would rate her minimally a 2.

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 deny Home Health Services.

DECISION AND ORDER

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

Accordingly 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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***** 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.