

**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. 15-003115 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 a request for a hearing filed on the Appellant's behalf.

After due notice, a telephone hearing was held on ██████████ ██████████, Appellant's mother and legal guardian, appeared and testified on Appellant's behalf. Appellant and ██████████, Appellant's sister and care provider, also testified as witnesses for Appellant. ██████████, Appeals Review Officer, represented the Respondent 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 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 chronic obstructive pulmonary disease (COPD); human immunodeficiency virus (HIV); schizophrenia; attention deficit hyperactivity disorder (ADHD); and kidney disease. (Exhibit A, page 16).
2. Appellant has been receiving HHS through the Department and was previously authorized for ██████ hours and ██████ minutes of such services per month, with a total monthly care cost of ██████████. (Exhibit A, pages 19-20).
3. Specifically, Appellant was approved for assistance with the tasks of bathing, grooming, taking medications, housework, laundry, shopping, and meal preparation. (Exhibit A, pages 19-20).

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4. On [REDACTED], ASW [REDACTED] conducted a reassessment in Appellant's home with Appellant, his guardian, and his provider. (Exhibit A, page 14).
5. During that reassessment, Appellant reported that he can groom and bathe himself. (Exhibit A, page 14; Testimony of ASW [REDACTED]).
6. Appellant's provider also reported that she only verbally prompts Appellant to groom and bathe himself. (Exhibit A, page 14; Testimony of ASW [REDACTED]).
7. On [REDACTED], ASW [REDACTED] sent Appellant written notice that his HHS payments would be reduced to \$183.40 per month, effective [REDACTED]. (Exhibit A, pages 8-13).
8. Regarding the reason for the reduction, the notice provided that assistance with grooming and bathing was being removed because Appellant only required verbal prompting as assistance with those two tasks. (Exhibit A, pages 8-13).
9. On [REDACTED], the Michigan Administrative Hearing System (MAHS) received the request for hearing filed on Appellant's behalf in this matter. (Exhibit A, pages 4-7).

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 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, effective ██████████, the Department removed assistance with bathing and grooming and reduced Appellant's HHS payments to ██████████ per month. According to ASW ██████████ notes and testimony, that reduction was based on the reports of Appellant and his provider that the provider only prompts him to complete those tasks and that he can otherwise complete them on his own.

In response, Appellant testified that he does not recall being asked about bathing or grooming. Appellant's representative also testified that no questions were asked about those two tasks. Appellant's care provider testified that she does not remember ASW ██████████ asking about bathing, but they did discuss the assistance provided, which includes getting the bath ready for Appellant, giving him a wash cloth, lathering him up, and directing him to wash. The care provider further testified that she and a cousin shave Appellant and do his hair, and that Appellant just will not complete tasks on his own.

Appellant and his representative bear the burden of proving by a preponderance of the evidence that the Department erred in reducing Appellant's HHS. Moreover, 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.

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Given the evidence in this case, the undersigned Administrative Law Judge finds that Appellant and his representative have failed to meet their burden of proof in this case and that the Department's decision must therefore be affirmed. ASW ██████████ provided detailed notes, taken at the time of the reassessment, as to what was reported during the assessment and her subsequent clear testimony was also credible. Appellant's witnesses, on the other hand, were inconsistent as to what was discussed and they failed to identify any physical limitations on Appellant's ability to bathe or groom himself, which suggests that, as found by ASW ██████████, he only has a need for non-covered verbal prompting.

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: ██████████

Date Mailed: ██████████

SK/db

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.