

**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. 15-005692 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 ██████████. Appellant appeared and testified on his own behalf. ██████████ Appellant's daughter, and ██████████ ██████████, a representative from Appellant's care provider agency, were also present or testified as a witness for Appellant. ██████████, Appeals Review Officer, represented the Respondent Department of Health and Human Services (DHHS or Department). ██████████, Adult Services Worker, 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 renal cancer, Klippel-Trenaunay syndrome, hyperlipidemia, congestive heart failure, high blood pressure, and diabetes. (Exhibit A, page 13).
2. Appellant had previously been authorized for HHS through the Department in the amount of ██████ hours and ██████ minutes per month, with a total monthly care cost of ██████████. (Exhibit B, page 2).
3. Specifically, HHS were authorized for assistance with the tasks of bathing, dressing, toileting, transferring, mobility, taking medications, housework, laundry, shopping, and meal preparation. (Exhibit B, page 2).

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4. On ██████████ conducted a ██████-month review of Appellant's services with Appellant in his home. (Exhibit A, page 15).
5. That same day, ██████ noted that she discussed Appellant's current needs with him and that Appellant reported no changes, but that his case "was adjusted to reflect proration due to customers [sic] girlfriend living in home. (Exhibit A, page 15).
6. On ██████████, ██████ sent Appellant written notice stating that his HHS payments would be reduced to ██████4 per month. (Exhibit A, pages 5-7).
7. The reduction took effect on ██████████. (Exhibit A, page 6; Testimony of ██████).
8. However, while ██████ had previously noted that some of Appellant's services would be adjusted due to the Department's proration policy, the actual reduction that was made was not based on a proration of Appellant's assistance with Instrumental Activities of Daily Living (IADLs). (Exhibit A, page 16; Exhibit B, page 2; Testimony of ██████).
9. Instead, the actual reduction included a termination of assistance with the IADL of taking medications; a decrease, but not proration, of assistance with the IADL of housework; and increases in assistance with the IADLs of laundry and shopping. (Exhibit A, page 16; Exhibit B, page 2).
10. Additionally, the reduction included decreases in assistance with the Activities of Daily Living (ADLs) of bathing and mobility, as well as termination of assistance with the ADLs of toileting and transferring. (Exhibit A, page 16; Exhibit B, page 2).
11. In implementing the reduction, ██████ changed Appellant's rankings with respect to specific tasks, but did not update or explain the justifications for the new rankings. (Exhibit A, page 14; Testimony of ██████).
12. Hicks subsequently determined that the notice she sent was defective. (Testimony of ██████).
13. On ██████████, she therefore reinstated Appellant's HHS, with a retroactive effective date of ██████████. (Testimony of ██████).
14. That same day, she sent Appellant another written notice stating that his HHS payments would be reduced to ██████████ per month. (Exhibit A, pages 5-7).

15. Regarding the reason for the reduction, the notice stated: “After careful review it has been determined that you qualify to continue receiving benefits from the ILS home health services program, however, your benefits have decreased due to DHS policy.” (Exhibit A, page 6).
16. The effective date of action identified in the second notice was ██████████. (Exhibit A, page 8).
17. On ██████████ the Michigan Administrative Hearing System (MAHS) received the request for hearing filed 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 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 decided to terminate Appellant's assistance with toileting, transferring and taking medications, while also reducing his assistance with bathing, mobility and housework.

With respect to the reduction in services, ██████████ noted in the general narrative that she completed after the home visit that Appellant's services were being reduced to reflect a proration in services due to Appellant's girlfriend living in the home.

During the hearing, ██████████ initially testified that she prorated Appellant's IADLs due to his girlfriend living in the home and also removed assistance with toileting, mobility, and bathing because Appellant was independent in those areas.

Subsequently, in response to questions from the Department's representative, ██████████ repeated her earlier testimony while also adding that she increased the number of days for assistance with bathing; removed assistance with taking medications because Appellant only required prompting in that area; and reduced assistance with housework to bring it more in line with policy.

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Later in the hearing, in response to questions from the undersigned Administrative Law Judge, ██████ testified that she did not prorate assistance with IADLs because Appellant's services had already been prorated earlier by Appellant's previous case worker. She also testified that she did reduce assistance with housework, because there was no reason to think that Appellant needed assistance with that task daily; reduce the number of minutes per day for assistance with bathing, and the overall monthly assistance with that task, based on the time recommended in the RTS used by the Department; and reduce assistance with mobility because Appellant used adaptive equipment to assist him in that task. ██████ further testified that she removed assistance with toileting because Appellant reported that he was independent in that area; transferring, because Appellant only needed adaptive equipment as assistance; and taking medications, because Appellant only needed prompting as assistance with that task.

In response, Appellant testified that, as he reported during the home assessment, he needs assistance with the same tasks as before and in greater amounts due to his increased needs. Specifically, he testified that he needs assistance with both washing and getting in-and-out of the bathtub; getting on-and-off of the toilet and cleaning up after accidents; transferring occasionally; using his wheelchair; and completing laundry, housework, shopping and meal preparation.

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, Appellant credibly testified regarding his needs and what he reported during the assessment. His testimony is also supported by the general narrative notes ██████ made after the home visit, where she stated that Appellant's needs were unchanged.

On the other hand, the notes and testimony of ██████, the Department's sole witness addressing the action in this case, were incorrect, contradictory or inconsistent regarding what actions were taken and why. For example, while ██████ general narrative stated that Appellant's needs were unchanged and that the reduction was solely based on a proration of IADLs, her initial testimony identified other tasks, including mobility, where assistance was terminated, but where the terminations were not mentioned or supported in her notes. Then, in response to questions from the Department's representative, ██████ continued to testify that Appellant's IADLs were prorated and that other tasks, including mobility, were removed, while also adding that she increased Appellant's assistance with bathing and reduced assistance with housework. Then, in response, to questions from the undersigned Administrative Law Judge, she acknowledged that there had been no proration of IADLs, mobility was reduced and not removed, and bathing had been reduced overall.

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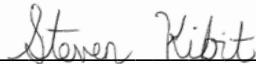
Given the above credibility determinations, the undersigned Administrative Law Judge finds that Appellant has met his burden of proof and that the Department's decision must therefore be reversed.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED THAT:

The Department's decision is **REVERSED** and it must initiate a reinstatement of Appellant's HHS to their previous level and a proper assessment of Appellant's services.




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.