

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES**

P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 373-4147

IN THE MATTER OF:

██████████

Appellant

Docket No. 15-006036 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.*, upon Appellant's request for a hearing.

After due notice, a hearing was held on June 16, 2015. Appellant appeared on his own behalf. ██████████ Appeals Review Officer, appeared on behalf of the Department of Health and Human Services. ██████████ Adult Services Supervisor, appeared as a witness for the Department. ██████████, the Adult Services Worker (ASW) assigned to Appellant's case was not available.

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, born ██████████, who has been receiving HHS. (Exhibit A, p 8; Testimony)
2. Appellant has been diagnosed with lumbar pain, kidney disease-dialysis, aortic valve replacement, sleep apnea, hypertension, and asthma. (Exhibit A, p 10; Testimony)
3. On March 19, 2015, the ASW completed an in-home reassessment with Appellant and his provider. The ASW noted during the assessment that the only Activity of Daily Living (ADL) Appellant needed assistance with was bathing due to his gout, but that Appellant had no prescription medication in the home, used no adaptive equipment, and was able to stand during the assessment. Based on these observations, the ASW determined that Appellant no longer needed assistance with the ADL of bathing. Since Appellant no longer needed hands-on assistance with any ADL, the ASW determined that, per policy, Appellant no longer qualified for HHS. (Exhibit A, p 12; Testimony)

4. Appellant's most recent 54a Medical Needs Form, dated ██████████
██████████ also does not certify that Appellant needs any assistance with his ADL's. Appellant's doctor only certified that he needed assistance with the Instrumental Activities of Daily Living (IADL) of meal preparation, shopping, laundry and housework. (Exhibit B, p 2; Testimony)
5. On ██████████ the ASW sent Appellant an Advance Negative Action Notice informing him that his HHS would be terminated effective ██████████
██████████ (Exhibit A, p 5; Testimony)
6. Appellant's Request for Hearing was received by the Michigan Administrative Hearing System on ██████████. (Exhibit 1)

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:

Payment Services Home Help

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.
- Light housecleaning.

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 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. [ASM 101, pages 1-3 of 5, emphasis added].

* * *

Services not Covered by Home Help Services

Home help services must **not** be approved for the following:

- Supervising, monitoring, reminding, guiding or encouraging (functional assessment rank 2). [ASM 101, page 5 of 5].

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

ADL's and IADL's 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.

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. [ASM 120, pages 2-3 of 7, emphasis added].

The Adult Services Supervisor testified that on March 19, 2015, Appellant's ASW completed an in-home reassessment with Appellant and his provider. The ASW noted during the assessment that the only Activity of Daily Living (ADL) Appellant needed assistance with was bathing due to his gout, but that Appellant had no prescription medication in the home, used no adaptive equipment, and was able to stand during the assessment. Based on these observations, the ASW determined that Appellant no longer needed assistance with the ADL of bathing. The Adult Services Supervisor testified that since Appellant no longer needed hands-on assistance with any ADL, the ASW determined that, per policy, Appellant no longer qualified for HHS. The Adult Services Supervisor also testified that Appellant's most recent 54a Medical Needs Form, dated February 27, 2015 also does not certify that Appellant needs any assistance with his ADL's. Appellant's doctor only certified that he needed assistance with the Instrumental Activities of Daily Living (IADL) of meal preparation, shopping, laundry and housework. The Adult Services Supervisor indicated that based on these findings, on April 7, 2015, the ASW sent Appellant an Advance Negative Action Notice informing him that his HHS would be terminated effective April 21, 2015.

Appellant testified that his condition is more complicated than the ASW noted. Appellant indicated that he has been on dialysis since 2008 because of his chronic kidney failure and that this condition also causes fatigue, low iron, and osteoarthritis.

Appellant testified that some days, he cannot even get out of bed because of his conditions. Appellant indicated that he just completed a course of physical therapy that he had been attending for years, following a surgery to replace the fistula in his left arm back in 2009. Appellant testified that he receives other services through the City of Detroit and that those services require that he need assistance with his ADL's. Appellant indicated that he felt the ASW set out to get him off the program and did not take the time to get to know him well enough to make a determination regarding his needs. Appellant testified that the doctor who completed his Medical Needs Form knows him and his conditions well and he has been seeing the doctor since 2008. Appellant indicated that he does have a single prong cane at home as well as a breathing machine for his sleep apnea. Appellant also testified that he informed the ASW during the assessment that his prescription medications were at the pharmacy.

Based on the evidence presented, Appellant has failed to prove, by a preponderance of evidence, that the termination of his HHS was inappropriate. The ASW based her decision on the fact that Appellant had no medication in the home, used no adaptive equipment during the assessment, and was able to stand during the assessment. Appellant's own doctor also failed to certify that Appellant needed assistance with any ADL's. As such, the evidence was not sufficient to establish that Appellant had a need for hands on assistance, functional ranking 3 or greater, with at least one ADL, based on the information available to the ASW when she terminated Appellant from the HHS program. Accordingly, the termination of Appellant's HHS is upheld. If Appellant's condition worsens, he can reapply for the program.

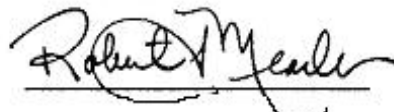
[REDACTED]
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DECISION AND ORDER

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

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.



Robert J. Meade
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of
Health and Human Services

cc:

[REDACTED]

[REDACTED] j

Date Signed: [REDACTED]

Date Mailed: [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 must 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.