

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

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(517) 335-2484; Fax: (517) 373-4147

IN THE MATTER OF:

██████████,

Appellant.

Docket No. 15-006039 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 Appellant's request for a hearing.

After due notice, a telephone hearing was held on June 16, 2015. Appellant appeared and testified on his own behalf. ██████████, Appeals Review Officer, represented the Respondent Department of Health and Human Services (DHHS or Department). ██████████, Adult Services Specialist, testified as a witness for the Department.

ISSUE

Did the Department properly decide to terminate Appellant's Home Help Services?

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 ██████████ Medicaid beneficiary who has been diagnosed with lower back pain, carpal tunnel syndrome, and lumbar radiculopathy. (Exhibit A, pages 7, 9).
2. Appellant has been receiving Home Help Services (HHS) through the Department in the amount of 43 hours and 12 minutes per month, with a total monthly care cost of ██████████. (Exhibit A, page 15).
3. Specifically, assistance is authorized for the Instrumental Activities of Daily Living (IADLs) of housework, laundry, shopping, and meal preparation. (Exhibit A, page 15).
4. Moreover, while no assistance is authorized for any Activities of Daily Living (ADLs), Appellant was previously ranked a "3" in the ADL of mobility

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by the Department because he had a cane to aid in walking. (Exhibit A, page 16).

5. On [REDACTED], [REDACTED] conducted an annual assessment in Appellant's home with Appellant. (Exhibit A, pages 13-14).
6. It was Ragland's first meeting with Appellant since being assigned to his case. (Testimony of Appellant; Testimony of Ragland).
7. During that assessment, Appellant was walking and bending independently, without difficulty, and without the use of any adaptive equipment. (Exhibit A, page 14; Testimony of Appellant; Testimony of Ragland).
8. On [REDACTED] the Department sent Appellant written notice that his HHS would be terminated, effective [REDACTED], because he did not require assistance with any ADLs and was therefore no longer eligible for HHS. (Exhibit A, page 5).
9. On [REDACTED], the Michigan Administrative Hearing System (MAHS) received the request for hearing filed by Appellant in this matter. (Exhibit A, pages 4-6).
10. Appellant's services have continued while this matter is pending. (Testimony of Appellant; Testimony of [REDACTED])

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 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.

* * *

Services not Covered by Home Help

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

- 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

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.

In this case, the Department decided to terminate Appellant's HHS on the basis that Appellant did not have a need for assistance with any ADLs at a level 3 or greater on the functional scale. Specifically, while Appellant was previously ranked a "3" in the ADL of mobility, Ragland found that the ranking was no longer proper after observing Appellant bending and walking independently, *i.e.* without the use of a walker, a cane, or the assistance of another person, during the home assessment. ██████████ also testified that Appellant expressly reported during that assessment that he did not use

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any adaptive equipment and that he only needed assistance with the IADLs of shopping, housework, laundry, and meal preparation.

In response, Appellant testified that, while ██████████ did observe him walking independently during the assessment, Appellant was only able to do so because he was on Vicodin at that time. Appellant also testified that he feels worse at other times and he stills needs to use his cane, especially when using stairs. Appellant further testified that Ragland never completed a full assessment or asked him about his adaptive equipment, medications, or need for surgery.

In support of his testimony, Appellant also submitted a Department of Human Services form completed by his medical provider on ██████████ in which that provider checked that Appellant had no physical limitations, but cannot ever lift more than 25 pounds, and does not need assistance with any personal care activities (Exhibit 1, pages 1-2); a Michigan Department of State Disability Parking Placard Application completed by the same medical provider on May 26, 2015 in which the provider indicated that Appellant needs a cane or walker to ambulate even short distances (Exhibit 2); a Medical Needs form dated November 11, 2014 in which a Dr. Shah checked that Appellant is ambulatory while also certifying a medical need for assistance with personal care activities (Exhibit 3); and medical documentation from June of 2015 indicating that Appellant was being scheduled for surgery (Exhibits 4 and 5).

Appellant bears the burden of proving by a preponderance of the evidence that the Department erred in terminating his HHS. Moreover, the undersigned Administrative Law Judge is limited to reviewing the Department's decision in light of the information available at the time the decision was made.

Here, the only ADL in dispute is mobility and, with respect to that task, Adult Services Manual 121 (5-1-2013), page 4 of 6, states:

Mobility - Walking or moving around inside the living area, changing locations in a room, assistance with stairs or maneuvering around pets, or obstacles including uneven floors.

- 1 No assistance required even though the client may experience some difficulty or discomfort. Completion of the task poses no risk to safety.
- 2 Client is able to move independently with only reminding or encouragement. For example, needs reminding to lock a brace, unlock a wheelchair or to use a cane.

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- 3 Minimal hands-on assistance required for specific maneuvers with a wheelchair, negotiating stairs or moving on certain surfaces. Without the use of a walker or pronged cane, client would need physical assistance.
- 4 Requires direct hands-on assistance with most aspects of mobility. Would be at risk if left alone.
- 5 Totally dependent on other for all mobility. Must be carried, lifted or pushed in a wheelchair or gurney at all times.

Given that definition 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 independently during the home visit and, while Appellant also testified that he still needed to use a cane occasionally at that time, the undersigned Administrative Law Judge does not find him credible on that issue given Ragland's credible testimony regarding what Appellant reported during the home visit and the DHS form completed by Appellant's own doctor in [REDACTED] indicating both that he did not have any physical limitations and that he did not need assistance with any personal care activities at that time. The only support for Appellant's testimony is the disability parking application in [REDACTED], but that form was generated after the decision at issue in this case and it is contradicted or unsupported by the rest of the evidence. Accordingly, Appellant's mobility needs did not rise to a level 3 or greater on the functional scale; he failed to meet his burden of proof; and the Department's decision must be sustained.

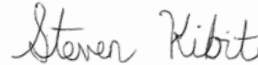
[REDACTED]
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DECISION AND ORDER

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

IT IS THEREFORE ORDERED THAT:

The Department's decision is **AFFIRMED**.



Steven Kibit
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Health and Human Services

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

SK/hj

cc: [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 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.