

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

P.O. Box 30763, Lansing, MI 48909
(517) 373-0722; Fax: (517) 373-4147

IN THE MATTER OF:

MAHS Docket No. 15-017427 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 her own behalf. ██████████ Appellant's home help provider, also testified as a witness 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 deny Appellant's request for additional 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 degeneration of the lumbar disc, chronic hepatitis C, and sciatica. (Exhibit A, pages 6, 8).
2. On ██████████, Appellant was referred for HHS. (Exhibit A, page 7).
3. As part of the application for HHS, the Department received a DHS-54A Medical Needs Form signed by Appellant's doctor on ██████████ (Exhibit A, page 13).

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4. In that medical needs form, Appellant's doctor certified that Appellant had a medical need for assistance with the personal care activities of bathing, dressing, shopping, laundry, and housework. (Exhibit A, page 13).
5. On [REDACTED] the ASW conducted a home visit with Appellant and Appellant's home help provider. (Exhibit A, pages 11-12).
6. During that visit, the ASW observed Appellant transferring out of bed independently and walking with the use of a walker. (Exhibit A, pages 11-12).
7. Appellant also reported that she did not do anything for herself and that the home help provider comes over regularly and assists her with everything. (Exhibit A, pages 11-12).
8. The ASW asked Appellant for more details and Appellant identified a number of specific tasks that the provider helped her with, including dressing and shopping. (Testimony of ASW).
9. Appellant subsequently became irritable during the assessment and the ASW was unable to complete it. (Exhibit A, pages 11-12).
10. Instead, the ASW informed her that the assessment would have to be rescheduled. (Exhibit A, pages 11-12).
11. However, the ASW never attempted to reschedule the home visit and assessment. (Testimony of ASW).
12. On [REDACTED] the ASW sent Appellant written notice that Appellant had been approved for [REDACTED] hours of HHS per month, with a total monthly care cost of [REDACTED]. (Exhibit A, page 5).
13. Specifically, HHS were approved for assistance with the tasks of bathing, laundry, housework, and meal preparation. (Exhibit A, page 14).
14. On [REDACTED] the Michigan Administrative Hearing System (MAHS) received the request for hearing filed in this action regarding the amount of services approved. (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.

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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

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Here, as discussed above, the Department approved Appellant for ██████ hours of HHS per month, with a total monthly care cost of ██████. Specifically, HHS were authorized for assistance with bathing, laundry, housework, and meal preparation.

In support of that decision, the ASW testified that, while the home visit and comprehensive assessment were not completed, she felt that she had gathered enough information to make a decision as the remainder of the assessment would have just been paperwork, which was subsequently mailed out and completed. She also testified that, while Appellant's needs in some areas were not clearly communicated, Appellant requested assistance with bathing, laundry, housework, meal preparation, dressing and shopping. The ASW further testified that she authorized assistance with the first four tasks identified by Appellant, but did not authorize assistance with dressing because Appellant said she only need such assistance occasionally and the provider said Appellant did not need it. With respect to shopping, the ASW could not say what happened and she acknowledged that it could have been an error.

In response, Appellant testified that she has had multiple surgeries on her back, neck and shoulders and that, due to her injuries, she needs assistance with more tasks than what were approved and more time for assistance with tasks that were approved. In particular, she testified that she needs assistance with bathing, laundry, housework, meal preparation, dressing, shopping and grooming; and that her provider does almost everything for her with those tasks. She did acknowledge that she became irritable during the assessment and may not have communicated her needs clearly at the time. She also acknowledged, but could not explain, why her doctor, who has treated her for a long time, did not identify a need for assistance with grooming and meal preparation.

Appellant bears the burden of proving by a preponderance of the evidence that the Department erred in denying her request for additional HHS.

Given the record in this case, the undersigned Administrative Law Judge finds that Appellant has met that burden of proof and that the Department's decision must therefore be reversed.

It is undisputed in this case that Appellant became irritable during the home visit and that the assessment was cut short. Accordingly, the Department may have been justified in denying the request for HHS on the basis that it was unable to complete the required assessment. Nevertheless, it did not do so and, instead, the ASW stated that the assessment would be rescheduled. However, she never did so and the Department's subsequent authorization of HHS was therefore improperly based on an incomplete assessment.

During the hearing, the ASW testified that she never rescheduled the assessment because she felt that she had gathered enough information to make a decision as the remainder of the assessment would have just been paperwork. However, that testimony is directly contradicted by the note she made at the time of the home visit, where she

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indicated that she was unable to get details regarding the work the provider was doing and that the assessment would have to be rescheduled. Moreover, the fact that the assessment was incomplete is demonstrated by the ASW's inability to explain the denial of assistance with shopping even though both Appellant and her doctor identified a need for it.

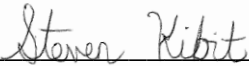
While the Department's decision was improper, it is not clear what, if any, additional HHS should be approved. Accordingly, the undersigned Administrative Law Judge will simply reverse the decision and order that a new assessment be conducted.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED THAT:

The Department's decision is **REVERSED** and it must initiate a reassessment of Appellant's request for HHS.



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

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

SK/db

cc: [REDACTED]
[REDACTED]
[REDACTED]
[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.