

**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:

██████████

Appellant.

_____ /

Docket No. 15-004419 REM

Case No. ██████████

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge on remand pursuant to an Order issued by the Honorable ██████████ in the Circuit Court for the County of ██████████

After due notice, a telephone hearing was held on ██████████ ██████████ ██████████ represented the Appellant ██████████. Appellant testified as a witness on his own behalf. ██████████, Appellant's mother, was also present during the hearing. Assistant Attorney General ██████████ represented the Respondent Department of Health and Human Services (DHHS or Department). Adult Services Specialists ██████████ and ██████████ testified as witnesses on the Department's behalf. ██████████, Appeals Review Officer, was also present for the Department.

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 who has been diagnosed with intractable epilepsy. (Exhibit 4, page 1; Exhibit 6, page 1).
2. Appellant began receiving HHS through the Department in the year ██████ and was previously authorized for ██████ hours and ██████ minutes of HHS per month. (Exhibit A, Attachment 3, pages 12, 18).

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3. Specifically, Appellant was authorized for assistance with the Activities of Daily Living (ADLs) of bathing, grooming, and mobility, and the Instrumental Activities of Daily Living (IADLs) of taking medications, housework, laundry, shopping, and meal preparation. (Exhibit A, Attachment 3, pages 18, 22-25).
4. On ██████████ conducted a home visit and reassessment of Appellant's services with Appellant and Appellant's mother/home help provider. (Exhibit A, Attachment 3, pages 11).
5. Following that reassessment, Appellant continued to be approved for HHS. (Exhibit A, Attachment 3, pages 11; Testimony of ██████████).
6. On ██████████ conducted another home visit and reassessment of Appellant's services with Appellant and Appellant's mother. (Exhibit A, Attachment 3, pages 10-11).
7. During that reassessment, both Appellant and his mother reported that his needs were the same as before. (Exhibit A, Attachment 3, page 10).
8. ██████████ also observed Appellant ambulating inside of the home and without the use of any adaptive equipment, but she did not see him walk outside of the home and she did not ask about Appellant's ability to use stairs, use steps, or walk on uneven surfaces. (Testimony of ██████████).
9. Appellant also provided ██████████ with a new medical needs form that had been signed by ██████████'s on ██████████ (Exhibit A, Attachment 2, page 1).
10. In the section of that form asking the doctor to certify that Appellant has a medical need for assistance with any of the listed activities, the "YES" box was checked while the "NO" box was whited out. (Exhibit A, Attachment 2, page 1; Testimony of ██████████).
11. ██████████ therefore telephoned Appellant's doctor's office directly and, during that telephone call, a secretary at the doctor's office stated that the doctor had been the one to white out the NO box and check the YES box. (Exhibit A, Attachment 3, page 10; Testimony of ██████████).
12. The secretary also reported that Appellant's doctor had stated that Appellant only required assistance with IADLs. (Exhibit A, Attachment 3, page 10; Testimony of ██████████).
13. On ██████████, the Department issued an Advance Negative Action Notice to Appellant indicating that his HHS would be terminated effective ██████████. (Exhibit A, Attachment 2, page 3).

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14. The notice of termination also stated that Appellant's HHS was being terminated because he did not have a need for hands-on assistance with any ADLs as required by policy. (Exhibit A, Attachment 2, page 3).
15. On [REDACTED] the Michigan Administrative Hearing System (MAHS) received a Request for Hearing regarding that termination. (Exhibit A, Attachment 5, page 1).
16. In a letter dated [REDACTED] wrote that Appellant is her patient in the [REDACTED] Comprehensive Epilepsy Program; Appellant has a history of medically intractable localization-related epilepsy; he continues to experience frequent seizures which affect his level of consciousness/awareness; and that, because of his seizures, he requires supervision with mobility to avoid injury. (Exhibit A, Attachment 2, page 2).
17. After due notice, a hearing was held on [REDACTED] before the undersigned Administrative Law Judge. (Exhibit A, Attachment 1, page 1).
18. In a letter dated [REDACTED] also wrote that Appellant is her patient and that:

He requires assistance with the following personal care activities:

Bathing
Grooming
Mobility
Medications
Meal preparation
Shopping for food
Laundry
[H]ousework

Exhibit 2, page 1

19. On [REDACTED], the undersigned Administrative Law Judge issued a Decision and Order affirming the Department's decision to terminate Appellant's HHS. (Exhibit A, Attachment 1, pages 1-7).
20. On [REDACTED], Appellant filed a Petition for Review of the [REDACTED] Decision and Order in the Circuit Court for the County of [REDACTED].
21. On [REDACTED], [REDACTED] issued an Opinion finding in favor of Appellant. (Exhibit 1, pages 1-4).

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22. On ██████████ also issued an Order remanding this matter for a new hearing and further assessment of Appellant's conditions and needs from an adult services worker and doctor as required by Adult Services Manual 105. (Exhibit 3, pages 1-2).
23. On ██████████ MAHS received a copy of Judge ██████████ order and, with due notice, a hearing on remand was scheduled for ██████████ at ██████████
24. On ██████████, MAHS received a "Stipulation to Adjourn Hearing" signed by the attorneys for both parties and requesting that the matter be adjourned for at least ██████████ days so that Appellant can be reassessed before the hearing takes place.
25. That same day, Appellant's HHS case was assigned to ██████████ for a new assessment. (Exhibit 6, page 1).
26. On ██████████, the undersigned Administrative Law Judge found that good cause existed to adjourn the hearing and ordered that the matter be adjourned and rescheduled for ██████████.
27. On ██████████ completed and signed a new Medical Needs form for Appellant. (Exhibit 1, page 1).
28. In that form, ██████████ certified that Appellant had a medical need for assistance with personal care activities. (Exhibit 4, page 1).
29. She also put a check mark next to the activities of bathing, grooming, mobility, taking medications, meal preparation, shopping, laundry, and housework. (Exhibit 4, page 1).
30. On ██████████, MAHS received another "Stipulation to Adjourn Hearing" signed by the attorneys for both parties.
31. In that stipulation, the attorneys stated that the reassessment had not yet been completed and they requested that the hearing be adjourned for a period of at least thirty days to allow the reassessment to be completed and to determine whether a hearing remained necessary.
32. That same day, the undersigned Administrative Law Judge issued an order denying the request for adjournment and finding that there was no good cause for adjourning the matter for a second time as this matter had been pending on remand since ██████████ it had already been adjourned once before so that a reassessment could be conducted; and there had been ample time to conduct the reassessment.

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33. On ██████████ also completed a home visit and assessment in Appellant's with Appellant and Appellant's mother. (Exhibit 6, pages 1-6; Exhibit B, pages 3-4).
34. The assessment was ██████████ first contact with Appellant. (Testimony of ██████████).
35. During that assessment, Appellant reported that he was self-sufficient in managing most daily tasks, but that he does benefit from assistance with his IADLs. (Exhibit B, pages 3-4; Testimony of ██████████).
36. Appellant also reported that he is rarely left alone and he needs constant supervision due to his seizures. (Testimony of Appellant).
37. In particular, Appellant reported that he is scared when going into the shower and that he needs to be monitored while showering in case he has a grand mal seizure. (Exhibit B, pages 3-4; Testimony of Appellant; Testimony of ██████████).
38. Appellant further reported that he last had a grand mal seizure in ██████████. (Exhibit B, page 3; Testimony of Appellant).
39. ██████████ did not ask Appellant about petit mal seizures. (Testimony of ██████████).
40. According to Appellant's testimony during the hearing, he has those types of seizures at least twice a week and they are similar to a grand mal seizure in that he loses his ability to speak and walk, and his mother has to physically guide him around. (Testimony of Appellant).
41. ██████████ did ask Appellant if Appellant was able to get up and freely move about the house and Appellant said yes. (Testimony of Appellant; Testimony of ██████████).
42. ██████████ did not ask Appellant about getting in-and-out of bed or walking on uneven surfaces outside the home. (Testimony of ██████████).
43. According to Appellant's testimony during the hearing, he has injured himself getting out of his bed in the past while having a seizure and that his mother has to assist him some times. (Testimony of Appellant).
44. Appellant also testified that using steps and getting in-and-out of the house can be a challenge for him, but that he did not report any such difficulties to ██████████ (Testimony of Appellant).

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45. ████████ did specifically asked Appellant about grooming and was told that Appellant is independent in that task. (Testimony of Appellant; Testimony of ████████)
46. On ██████████, the representatives for both parties renewed their request for adjournment.
47. They also indicated that the Department had now completed the reassessment, but that no decision had yet been made and Appellant had not had a chance to review any findings or decisions by the Department.
48. The representatives for the parties further indicated that they were working toward settling this matter.
49. Appellant's representative also stated that Appellant was willing to waive his right to have a decision on his request for hearing within a specific time period.
50. Given that waiver and the agreement of the parties to adjourn the matter, in addition to the fact that the reassessment had now been conducted and the case was moving forward, the undersigned Administrative Law Judge determined that good cause existed to adjourn the matter a ██████████ and granted the parties' request to adjourn the hearing.
51. The matter was subsequently rescheduled for ██████████.
52. On ██████████, the Department sent Appellant written notice that it has been determined that HHS will not be authorized as the most recent assessment conducted in his home did not identify a need for hands-on assistance with at least one ADL as required by policy. (Exhibit B, page 2).
53. On ██████████, the telephone hearing in this matter was held as scheduled.

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

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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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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.

Here, the Department initially 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. Moreover, after the appeal and remand, it reassessed Appellant's case again and again determined that HHS should not be authorized given that Appellant only needed supervision with respect to his ADLs.

In response, Appellant testified that, in addition to assistance with IADLs, his mother/provider has to constantly monitor him for safety reasons and that he is rarely left alone because of the risk of seizures. In particular, Appellant testified that he needs to be monitored while showering in case he has a grand mal seizure. Appellant also testified that, while the workers did not specifically ask about it and he therefore did not report it, his mother has to assist him getting out of his bed and getting in-and-out of the house, due to his difficulties with stairs.

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.

Given the record in this case, the undersigned Administrative Law Judge finds that Appellant failed to meet that burden of proof with respect to either the ██████████ decision to terminate Appellant's HHS or the ██████████ decision to maintain that termination.

Appellant and his representative first assert that Appellant has been receiving HHS since ██████████ nothing has ever changed with respect to his medical conditions or needs; and that he should therefore continue to receive services. In particular, Appellant's representative notes that Appellant continued to receive HHS after the change in policy that required a beneficiary to have a need for assistance with at least one ADL at a level 3 or greater on the functional scale and that ██████████ herself continued to approve Appellant for HHS just ██████████ months before she determined that they should be terminated. However, while Appellant had been receiving HHS for years, that alone does not entitle him to HHS and Adult Services Manual 155 specifically requires that home help cases be reviewed every ██████████ months. Each review or assessment stands on its own and the Department must make its decision in light of the information it has at the time.

Moreover, while consistently stating that nothing had changed, neither Appellant nor his mother reported a specific need for assistance at a level 3 or greater on the functional scale with any of the ADLs he was previously authorized assistance with. For example, while it is undisputed that Appellant requires constant supervision due to his seizures;

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that he is rarely left alone; and that he is always monitored while bathing in case he has a seizure; ASM 101 specifically provides that HHS must not be approved for supervising or monitoring as that assistance only rises to a level 2 on the functional scale.

Additionally, even if Appellant needs assistance on stairs and uneven surfaces, he lives in a one-story home and, as defined in Adult Services Manual 121 (5-1-2013), assistance with the ADL of mobility only includes assistance inside the living area. It is also undisputed that both ██████████ and ██████████ observed Appellant ambulating independently and without the use of adaptive equipment inside his home. Appellant further conceded that he did not report any assistance in mobility to either worker and, while Appellant is not expected to know the applicable policies, he is expected to report all of his needs and the Department is justified in relying upon what he states.

Similarly, while Appellant now testifies that he needs assistance with the ADL of transferring given that his mother sometimes assists him with getting out of his bed, he was not receiving HHS for such assistance before; he did not identify any such assistance to ██████████; and he told ██████████ that he could get up on his own.

Furthermore, while Appellant was previously authorized for assistance with the ADL of grooming, no such need was reported to Hutkowski and Appellant specifically told ██████████ that he was independent in that task. Appellant likewise testified during the hearing that he is independent in grooming.

Overall, Appellant's representative also notes that Appellant's doctor has repeatedly concluded, in both letters and medical needs forms, that Appellant needs assistance with both ADLs and IADLs. However, while Adult Services Manual 105 does require that a Medicaid enrolled medical professional certify a medical need for assistance, the doctor's findings in this case are not dispositive as ASM 105 also expressly states that it is the adult services specialist that is responsible for determining the necessity and level of need for home help services.

Moreover, the specific letters and medical needs forms from Appellant's doctor fail to support his position in this case that his need for assistance with ADLs goes beyond supervision. For example, the doctor's ██████████ letter merely states that Appellant requires "supervision with mobility" and, as discussed above, HHS must not be approved for supervision. Also, the first medical needs form only certified a medical need for assistance with personal care activities and it did not identify what assistance Appellant needs and whether any of that assistance was hands-on. Similarly, while the doctor's other letter and the second medical needs form expressly identified a need for assistance with the ADLs of bathing, grooming, and mobility, they both failed to identify what assistance Appellant needs and whether it is anything more than supervision. Lastly, while Appellant's doctor repeatedly identified a need for assistance with grooming, Appellant himself testified that he is independent in that task.

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Accordingly, taking into account the comprehensive assessments as well as the letters and forms submitted by Appellant's doctor, the undersigned Administrative Law Judge finds that Appellant has failed to meet that burden of proof with respect to either the [REDACTED] decision to terminate his HHS or the [REDACTED] decision to maintain that termination, and that the Department's decisions must therefore be affirmed.

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

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]

***** 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.