

**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. 15-015347 HHS¹

██████████

██████████

██████████

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 sister, and ██████████, Appellant's mother, also testified as witnesses 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 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, among other conditions, a traumatic brain injury (TBI); precordial catch syndrome (PCS); post-traumatic stress disorder (PTSD); chronic pain; and depression; following a motor vehicle accident on ██████████. (Exhibit 1, pages 4, 6).

¹ This case was originally coded as a HHP case on the belief that Appellant is a home help provider. However, as Appellant is the recipient of Home Help Services (HHS) and not a provider of such services, the matter was recoded as a HHS case after the hearing and the undersigned Administrative Law Judge has the authority to issue a decision and order.

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2. Following the accident, Appellant was treated by the [REDACTED] and, on [REDACTED], a physician from that group signed a Disability Certificate indicating that Appellant was disabled from working; housework; caring for her personal needs/attendant care, including bathing and dressing; and driving; between [REDACTED] [REDACTED] and [REDACTED]. (Exhibit 2, page 6).
3. [REDACTED] issued a number of subsequent Disability Certificates over the next year that continued to find that Appellant was disabled from working, housework and driving. (Exhibit 2, pages 14, 17-33).
4. However, those subsequent Disability Certificates did not provide that Appellant was disabled from caring for her personal needs/attendant care. (Exhibit 2, pages 14, 17-33).
5. On [REDACTED] Appellant's doctor signed a medical needs form certifying that Appellant has a medical need for assistance with personal care activities listed on the form. (Exhibit A, page 17).
6. Specifically, Appellant's doctor circled the listed Instrumental Activities of Daily Living (IADLs) of taking medications, housework, laundry, shopping, and meal preparation. (Exhibit A, page 17).
7. Appellant's neuropsychologist also issued a letter/referral stating that, due to her medical conditions, Appellant required attendant care for safety reasons [REDACTED] hours a day, [REDACTED] days a week. (Exhibit 1, page 6).
8. The neuropsychologist further noted that Appellant is unable to work in any capacity and has been told not to drive, cook, work, or be around/operate dangerous machinery. (Exhibit A, page 6).
9. On [REDACTED], Appellant was referred for HHS. (Exhibit A, page 9).
10. On [REDACTED], the ASW conducted an initial assessment in Appellant's home with Appellant, Appellant's sister/care provider, and Appellant's mother. (Exhibit A, pages 15-16).
11. During that assessment, Appellant requested assistance with the Activities of Daily Living (ADLs) of bathing, grooming, dressing, and transferring, and the IADLs of laundry, shopping, housework, and meal preparation. (Exhibit A, page 15).
12. The ASW observed the Appellant transferring, ambulating and using her hands independently. (Exhibit A, page 16; Testimony of ASW).

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13. The ASW also noted that the medical needs form only identified a need for assistance with IADLs; the ██████████ only identified a need for assistance with housework and driving; and that Appellant's neuropsychologist only identified a need for monitoring. (Exhibit A, page 15).
14. Based on the information provided by the doctors and her own observations, the ASW then determined that Appellant did not meet the criteria for HHS because she did not require any hands-on assistance with any ADLs as required by policy. (Testimony of ASW).
15. On ██████████, the Department sent Appellant written notice that the request for HHS had been denied. (Exhibit A, pages 5-8).
16. On ██████████, the Michigan Administrative Hearing System (MAHS) received the request for hearing filed in this matter with respect to that denial. (Exhibit A, page 4).
17. On ████████ ████████ ████████, Appellant's Case Manager at ████████ ████████ ██████████ issued a letter stating that Appellant has been a client since ██████████ and that, due to Appellant's seizures and vertigo issues, Appellant is a fall risk and requires assistance in bathing, assistance with washing hair, and direct supervision. (Exhibit 3, page 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 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.

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- 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.

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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 deny Appellant's request for 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, the ASW wrote in her notes and testified during the hearing that, while Appellant reported a need for assistance with both ADLs and IADLs, she observed the Appellant transferring, ambulating and using her hands independently. The ASW also testified that the medical documentation submitted by Appellant all failed to identify any needed hands-on assistance with ADLs.

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In response, Appellant's witnesses testified that Appellant has lots of medical issues, including issues with pain, and that her sister must assist her with ADLs such as bathing, grooming and toileting. They also testified that the physician who completed the medical needs form did so when he first started seeing Appellant, and that the other medical documentation from [REDACTED], Appellant's neuropsychologist, and [REDACTED] better reflect Appellant's need for assistance with ADLs.

Appellant bears the burden of proving by a preponderance of the evidence that the Department erred in denying her request for 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 available information and applicable policies in this case, Appellant has failed to meet her burden of proof and the Department's decision must be affirmed. While the medical needs form indicated that Appellant needs assistance with personal care activities, the only activities specifically circled on that form were IADLs. Moreover, while Appellant's doctor at [REDACTED] indicated in [REDACTED] that Appellant needed assistance with attendant care tasks such as bathing and dressing, all of the subsequent Disability Certificates it issued over the next year no longer found that Appellant needed such assistance. Similarly, while Appellant's neuropsychologist also issued a letter/referral stating that, due to her medical conditions, Appellant required [REDACTED] attendant care for safety reasons, he did not identify any specific hands-on care that Appellant needed with ADLs and supervision/monitoring is not covered by HHS.

Appellant's Case Manager at [REDACTED], did issue a letter stating that Appellant requires assistance in the ADL of bathing. However, that letter is unsupported by the remainder of the evidence in this case and, in any case, it was provided to the Department after the decision at issue in this case was made and, as discussed above, 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.

To the extent Appellant has new or updated information to provide, she may always reapply for HHS. With respect to the decision at issue in this case however, the Department's decision must be affirmed given the information that was provided at the time the decision was made.

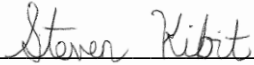
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DECISION AND ORDER

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

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.