



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

MIKE ZIMMER
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: [REDACTED]
MAHS Docket No.: 15-021954

[REDACTED]
[REDACTED]

ADMINISTRATIVE LAW JUDGE: Steven Kibit

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 the Petitioner's request for a hearing.

After due notice, an in-person hearing was held on [REDACTED]. [REDACTED] appeared on behalf of the Petitioner. Petitioner testified as a witness on her own behalf. [REDACTED], Appeals Review Officer, represented the Respondent Department of Health and Human Services (Department). [REDACTED], Adult Services Worker (ASW), testified as witness for Respondent. [REDACTED], another ASW, was also present for Respondent.

ISSUE

Did the Department properly deny Petitioner'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. Petitioner is a thirty-seven-year-old Medicaid beneficiary who has been diagnosed with multiple sclerosis, depression, and anxiety. (Exhibit A, pages 10, 12).
2. On [REDACTED] Petitioner was referred for HHS. (Exhibit A, page 11).
3. On [REDACTED] the ASW conducted a home visit with Petitioner. (Exhibit A, pages 16-17).

4. Petitioner did not have an enrolled provider at the time of the home visit. (Testimony of Petitioner; Testimony of ASW).
5. During that visit, Petitioner reported and the ASW found, among other things, that Petitioner is totally dependent on others for assistance in the Instrumental Activities of Daily Living (IADLs) of meal preparation, laundry, shopping, and housework. (Exhibit A, pages 13-14; 16-17).
6. However, while finding that Petitioner was totally dependent on others in those four IADLs, the ASW only ranked Petitioner as a "4" for those tasks on the functional scale outlined in policy. (Exhibit A, pages 13-14).
7. On [REDACTED] the ASW sent Petitioner a Services and Payment Approval Notice stating that Petitioner was approved for HHS effective [REDACTED]. (Exhibit A, pages 8-9).
8. The notice did not identify a specific approval amount because Petitioner did not have an enrolled provider, but it did direct Petitioner to contact the ASW directly when she did enroll a provider. (Exhibit A, pages 8-9; Testimony of ASW).
9. Petitioner subsequently enrolled a home help provider. (Testimony of Petitioner; Testimony of ASW).
10. Home help payments in the amount of [REDACTED] per month were then authorized, effective [REDACTED]. (Exhibit A, page 19).
11. Specifically, HHS were authorized for assistance with the Activities of Daily Living (ADLs) of bathing and grooming, and the IADLs of meal preparation, laundry, shopping, and housework. (Exhibit A, page 15).
12. The amount of time authorized for assistance with each task was based on Petitioner's ranking in that task and the Reasonable Time Schedule (RTS) used by the Department as a guide. (Testimony of ASW).
13. 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 (MA) 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 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 health professional 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.

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.

* * *

Time and Task

The specialist will allocate time for each task assessed a rank of 3 or greater, based on interviews with the client and provider, observation of the client's abilities and use of the reasonable time schedule (RTS) as a **guide**. The RTS can be found in ASCAP under the Payment module, Time and Task screen. When hours exceed the RTS, a rationale **must** be provided.

An assessment of need, at a ranking of 3 or greater, does not automatically guarantee the maximum allotted time allowed by the reasonable time schedule (RTS). **The specialist must assess each task according to the actual time required for its completion.**

Example: A client needs assistance with cutting up food. The specialist would only pay for the time required to cut the food and not the full amount of time allotted under the RTS for eating.

IADL Maximum Allowable Hours

There are monthly maximum hour limits on all instrumental activities of daily living (IADL) except medication. The limits are as follows:

- Five hours/month for shopping.
- Six hours/month for light housework.
- Seven hours/month for laundry.
- 25 hours/month for meal preparation.

Here, as discussed above, the Department approved Petitioner for [REDACTED] hours of HHS per month, with a total monthly care cost of [REDACTED], for assistance with bathing, grooming, meal preparation, housework, shopping and laundry.

In support of that decision, the ASW testified regarding the general assessment process and what Petitioner reported in this case. He also testified that, while Petitioner reported requiring assistance in all aspects of meal preparation, housework, shopping and laundry or being totally dependent on others for those tasks, he only ranked Petitioner as a "4" in those tasks and based the amount of assistance authorized for those tasks on the rankings and the RTS used by the Department as a guide. However, he could not provide any justifications during the hearing for ranking Petitioner as a "4" in each task and acknowledged that she should be ranked a "5" and could have received the maximum amount of assistance allowed under policy for each of the four IADLs.

In response, Petitioner testified regarding the general application and assessment process. She also testified that the Department approved an insufficient amount of assistance to meet her needs and that tasks are being left unfinished by her workers. Petitioner further described what specific assistance she needs with various tasks and the adaptive equipment she uses to complete other tasks, such as transferring, toileting and dressing.

Petitioner 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 Petitioner has met that burden of proof and that the Department's decision must therefore be reversed. Per the above policy, the Department must conduct a functional assessment to determine the Petitioner's ability to perform the listed activities and rank her abilities on a five point functional scale, before allocating time for assistance for each task assessed a rank of 3 or greater. Moreover, in allocating time for assistance tasks, the Department takes into account a number of factors, including client interviews, the worker's observations, and the RTS used by the Department as a guide. Here, the ASW performed the functional assessment, but even he acknowledges that he improperly ranked Petitioner as a "4" on the functional scale for the IADLs of meal preparation, housing, laundry, and shopping. Given her reports of total dependence in those activities and the ASW's testimony that he agreed with those reports, Petitioner should have clearly been ranked a "5" in the four IADLs. Additionally, the errors in ranking Petitioner were clearly not harmless as the ASW testified that the amount of time authorized for assistance with each task was based on Petitioner's ranking in that task and the RTS.

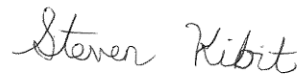
In light of the clear errors in ranking Petitioner and in allocating time for assistance with at least some of the approved tasks, Petitioner has met her burden of proof and the Department's decision must be reversed.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Respondent improperly denied Petitioner's request for additional HHS.

IT IS, THEREFORE, ORDERED that:

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



SK/db

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

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30763
Lansing, Michigan 48909-8139

DHHS

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]

DHHS Department Rep.

[REDACTED]
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DHHS -Dept Contact

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