



RICK SNYDER
GOVERNOR

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

MIKE ZIMMER
DIRECTOR

[REDACTED]

Date Mailed: [REDACTED]
MAHS Docket No.: 15-023395 HHS
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

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 Petitioner's request for a hearing.

After due notice, a hearing was held on [REDACTED]. Petitioner appeared and testified. Petitioner was represented by [REDACTED], caregiver.

[REDACTED] Appeals Review Officer, represented the Department of Health and Human Services (Respondent or Department). [REDACTED], Adult Services Worker (ASW), and [REDACTED] Adult Services Worker, appeared as witnesses for the Respondent.

ISSUE

Did the Respondent do a proper assessment at Petitioner's review for his HHS grant?

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 [REDACTED] year-old female beneficiary of the Medicaid and SSI welfare programs.

2. At all relevant times, Petitioner has been a beneficiary of the HHS program. (Exhibit A).
3. On [REDACTED] the Respondent conducted a 6 month review and completed a home call visit. The ASW recorded that 'Petitioner greeted worker by first walking up the hill and then back down independently. Doing much better physically. States she is now independent in dressing, transferring, mobility, and eating, so ranking changed to 1. Only needs minimal assistance with bathing and grooming, ranking changed to 8s. No changes in meds...' (Exhibit A.14; Testimony).
4. The Respondent showed up early for the assessment and failed to contact the caregiver at review.
5. Following the home visit, the Department removed transferring, mobility, eating and dressing, and adjusted the time tasks to reflect the functional assessment. Petitioner's case had been prorated prior to the review here, and, continued to be prorated. (Exhibit A.16-17; Testimony).
6. On [REDACTED] the Respondent issued an Advance Negative Action Notice informing Petitioner that her HHS grant was reduced to \$312.97 per month. (Exhibit A.5).
7. On [REDACTED], Petitioner filed a Request for Hearing an administrative hearing attaching a letter from her physician dated [REDACTED] that was not available to the Respondent at the time of the assessment. (Exhibit A.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 statute, 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 (ASM) 101, 11-1-11, addresses HHS payments:

Payment Services Home Help

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.

*Adult Services Manual (ASM) 101,
11-1-2011, Page 1 of 4.*

Adult Services Manual (ASM) 105, 11-1-11, addresses HHS eligibility requirements:

Requirements

Home help eligibility requirements include all of the following:

- Medicaid eligibility.
- Certification of medical need.
- Need for service, based on a complete comprehensive assessment (DHS-324) indicating a functional limitation of level 3 or greater for activities of daily living (ADL).
- Appropriate Level of Care (LOC) status.

Necessity for Service

The adult services specialist is responsible for determining the necessity and level of need for home help services based on:

- Client choice.
- A completed DHS-324, Adult Services Comprehensive Assessment. 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.

- Verification of the client's medical need by a Medicaid enrolled medical professional via the DHS-54A. The client is responsible for obtaining the medical certification of need; see ASM 115, Adult Services Requirements.

*Adult Services Manual (ASM) 105,
11-1-2011, Pages 1-3 of 3*

Adult Services Manual (ASM 120, 5-1-2012), pages 1-4 of 5 addresses the adult services comprehensive assessment:

INTRODUCTION

The DHS-324, Adult Services Comprehensive Assessment is the primary tool for determining need for services. The comprehensive assessment must be completed on **all open independent living services cases**. ASCAP, the automated workload management system, provides the format for the comprehensive assessment and all information will be entered on the computer program.

Requirements

Requirements for the comprehensive assessment include, but are not limited to:

- A comprehensive assessment will be completed on all new cases.
- A face-to-face contact is required with the client in his/her place of residence.
- The assessment may also include an interview with the individual who will be providing home help services.
- A new face-to-face assessment is required if there is a request for an increase in services before payment is authorized.
- A face-to-face assessment is required on all transfer-in cases before a payment is authorized.
- The assessment must be updated as often as necessary, but minimally at the six month review and annual redetermination.

- A release of information must be obtained when requesting documentation from confidential sources and/or sharing information from the department record.
 - Use the DHS-27, Authorization to Release Information, when requesting client information from another agency.
 - Use the DHS-1555, Authorization to Release Protected Health Information, if requesting additional medical documentation; see RFF 1555. The form is primarily used for APS cases.
 - Follow rules of confidentiality when home help cases have companion APS cases, see SRM 131 Confidentiality.

Functional Assessment

The **Functional Assessment** module of the **ASCAP** comprehensive assessment is the basis for service planning and for the home help services 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 ranking 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.

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 IADLs if the assessment determined a need at a level 3 or greater.

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 higher, 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 rationale **must** be provided.

An assessment of need, at a ranking of 3 or higher, 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 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

Proration of IADLs

If the client does not require the maximum allowable hours for IADLs, authorize only the amount of time needed for each task. Assessed hours for IADLs (except medications) must be prorated by **one half** in shared living arrangements where other adults reside in the home, as home help services are **only** for the benefit of the client.

Note: This does not include situations where others live in adjoining apartments/flats or in a separate home on shared property and there is no shared, common living area.

In shared living arrangements, where it can be **clearly** documented that IADLs for the eligible client are completed separately from others in the home, hours for IADLs do not need to be prorated.

Example: Client has special dietary needs and meals are prepared separately; client is incontinent of bowel and/or bladder and laundry is completed separately; client's shopping is completed separately due to special dietary needs and food is purchased from specialty stores; etc.

*Adult Services Manual (ASM) 120, 5-1-2012,
Pages 1-5 of 5*

Here, Petitioner argues that the ASW failed to interview the caregiver. Petitioner's Hearing Representative also argues that due to a head injury, Petitioner is not capable of giving accurate information to the Respondent, and that the Respondent should not have relied on Petitioner's representations as evidenced by the [REDACTED] physician's letter. Petitioner also argues that she does not live in a shared house-hold.

Respondent argues that the changes were based on in-person functional observations, and, that proration is mandated by federal and state law. The Respondent also indicated that the proration has been applied to Petitioner's grant for some time, and, was not a new calculation in Petitioner's grant. Respondent stipulates that she should have interviewed the caregiver.

The purview of an administrative law judge (ALJ) is to review the Department's action and to make a determination if those actions are in compliance with Department policy, and not contrary to law. The reviewing forum is required to focus on the action taken at the time it took the action. Moreover, the reviewing forum is required to base the decision on the evidence of record.

As noted by the Respondent, Petitioner was in fact approved more hours than she is awarded due to the fact that Respondent was required to reduce his grant based on the proration policy, due to a shared household. The Department is required under law and policy to prorate IADLs in such instances. Petitioner argues that it is not a shared household; however, the Respondent indicates that no changes were made in the proration of the grant here as Petitioner's HHS case was previously prorated. Petition may request an assessment of the shared household in the future.

As to the [REDACTED] letter from Petitioner's physician, this letter does in fact support Petitioner's argument that Petitioner may not be a credible individual when discussing and representing her own needs. However, Petitioner does not have a guardian, and, the letter was not in existence at the time of the assessment as it was not composed until some time later. Neither the Department nor this ALJ can hold the Respondent to evidence that was not in existence at the time of the assessment. Moreover, as the Respondent correctly points out, Petitioner does not have a guardian. The Respondent was not put on notice of Petitioner's now alleged difficulty with credibly representing her needs.

As to the failure of the Respondent to interview the caregiver, the Respondent's ARO testified and led its witness to indicate that the Respondent can interview the beneficiaries without the caregiver being present. In addition, taking the entire records into consideration, the record does not present with substantial evidence that there would be a difference in the outcome.

This reviewing forum must uphold where the evidence of record supports the action taken. Here, this ALJ must find that the evidence of record not only supports the application of the proration formula as the State of Michigan data base shows a second adult living in Petitioner's home. In addition, the application of proration is required by federal and state law.

After a careful review of the credible and substantial evidence on the whole record, this ALJ finds that the Department's actions were in compliance with its policy, and supported by the documentary and testimonial evidence taken as a whole at the time the Department made its determination. Thus, the Department's reduction must be upheld.

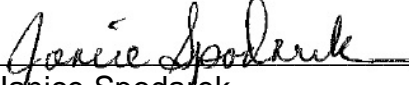
Petitioner will be having another 6 month review shortly, and, at that time, should request a review of the proration and any medical evidence that Petitioner's has that she feels may be relevant at that time.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department's allotment of Petitioner's HHS grant was correct based on the available evidence.

IT IS THEREFORE ORDERED THAT:

The Department's decision in this case is hereby **UPHELD**.



Janice Spodarek
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of
Health and Human Services

JS/cg

cc:



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