



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: March 25, 2016
MAHS Docket No.: 15-020963
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Corey A. Arendt

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 the Petitioner's request for a hearing.

After due notice, a hearing was held on [REDACTED]. [REDACTED], Petitioner's Provider, appeared and offered testimony on the Petitioner's behalf. The Petitioner appeared as a witness. [REDACTED], Appeals Review Officer, represented the Department of Health and Human Services (Respondent). [REDACTED], Adult Services Worker (ASW) appeared as a witnesses for the Department.¹

Exhibits entered:

Respondent
Petitioner

Exhibit A – Hearing Packet
None

ISSUE

Did the Respondent properly close the Petitioner's Home Help Services (HHS) case?

¹ [REDACTED], ([REDACTED]'s Supervisor), was not sworn in and did not provide any substantive testimony during the course of the hearing. [REDACTED] did provide a policy clarification during the hearing that did not require her to be sworn in. The clarification was no different than an attorney providing case law/statutes for review.

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. As of [REDACTED], the Petitioner was approved for and receiving HHS benefits. (Exhibit A, pp. 10, 17, 18; Testimony.)
2. On [REDACTED], the Petitioner's HHS case was transferred to [REDACTED]. (Exhibit A, pp. 10, 17; Testimony.)
3. On [REDACTED], the Respondent sent the Petitioner a DHS-721. (Exhibit A, p. 10.)
4. On [REDACTED], the Respondent sent the Petitioner a DHS-54A. (Exhibit A, p. 10.)
5. On [REDACTED], the ASW went to the Petitioner's home for an unannounced face to face assessment.² The ASW was buzzed into the Petitioner's complex but was not let into the Petitioner's home. The ASW identified herself and explained the purpose of her visit but the Petitioner would not let her in. The Petitioner did not know who the ASW was or why she was really trying to gain entry to her home. The ASW indicated that she would be closing the Petitioner's case if no one opened the door. No one opened the door and the ASW left. (Exhibit A, pp. 10-13; Testimony.)
6. The ASW believed she saw the Petitioner at the Petitioner's apartment complex on several occasions transferring, walking, carrying her handbag/purse, bending etc. At no point during any of these occasions did the ASW make contact with the Petitioner when the observations were made as she had safety concerns regarding her own wellbeing. (Exhibit A, p. 16; Testimony.)
7. The ASW believes she accurately identified the Petitioner by matching the individual she saw to an identification card photo in the Petitioner's file. (Exhibit A, p. 16; Testimony.)
8. Prior to [REDACTED], the ASW had discussions with individuals from the Petitioner's apartment complex who allegedly indicated that the Petitioner over the past year or so was observed walking, carrying bags, transferring and standing in the complex's office without the use of supports or aids. (Exhibit A, p. 16; Testimony.)

² The Respondent never sent any type of notice to the Petitioner indicating a face to face visit was to take place.

9. At no point in time did the ASW ever have a face to face interaction with the Petitioner. (Testimony.)
10. At no point in time did a comprehensive assessment take place between the ASW and the Petitioner. (Testimony.)
11. On [REDACTED], the Respondent sent the Petitioner an Advance Negative Action notice. The notice indicated the Petitioner's case was closing effective [REDACTED] as the Petitioner was observed on multiple occasions displaying abilities and that that a six month review to address the observations could not be completed as the Petitioner did not let her into her home. (Exhibit A, pp. 10-13; Testimony.)
12. At some point in time after [REDACTED], the Michigan Administrative Hearings System received the Petitioner's request for hearing. (Exhibit A, pp. 4-8.)

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 Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

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.

ASM 105 (4-1-2015) addresses eligibility criteria:

General

Home help services are available if the client meets all eligibility requirements. . . Home help services payments cannot be authorized prior to establishing Medicaid eligibility and completing a face-to-face assessment with the client.

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** indicating a functional limitation of level 3 or greater for at least one activity 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 all of the following:

- 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. . .

ASM 105, April 1, 2015, pp 1, 3.

ASM 115 (4-1-2015) addressed adult services requirements:

Comprehensive Assessment (DHS-324)

Conduct a face-to-face interview with the client in their home to assess the personal care needs. Complete the DHS-324, Adult Services Comprehensive Assessment which is generated from the Adult Services Comprehensive Assessment Program (ASCAP);

Contacts

The specialist **must, at a minimum, have a face-to-face interview with the client, prior to case opening, then every six months in the client's home, at review and redetermination.**

ASM 115, April 1, 2015, pp 2, 3.

ASM 120 (12-1-2013) addresses 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 must 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.

ASM 120, December 1, 2013, p. 1.

ASM 155 (5-1-2013) addresses reviews:

Case Reviews

Independent living services (home help) cases must be reviewed every six months. A face-to-face contact is required with the client, in the home.

ASM 155, May 1, 2013, p. 1.

ASM 170 (5-1-2013) addresses the issue of case closure:

Termination of Home Help Payments

Home help services payments may be terminated and closing procedures initiated, in any of the following circumstances:

- The client fails to meet any of the eligibility requirements.
 - Medicaid eligible.
 - Medical professional does not certify a need for services on the DHS-54A, Medical Needs form.
 - **Assessment determines** client no longer requires home help services.
- The client no longer wishes to receive home help services.
- The client is receiving services from another program and this would result in a duplication of services.

ASM 170, May 1, 2013, p. 1.

* * *

In this case, the Respondent indicated the Petitioner's HHS case was closed as the ASW had personally observed the Petitioner performing activities that would indicate the Petitioner was fully capable of performing each of her ADL's and furthermore, that contacts made with staff from the Petitioner's apartment complex corroborated what the ASW had witnessed. In addition to these arguments, the Respondent indicated a face-to-face was attempted in [REDACTED] to address the observations made but that the Petitioner failed to let the ASW into her apartment to perform the assessment.

The policy provided in ASM 170 permits a case closure where an assessment determines the client no longer requires home help services. ASM 170 does not specifically delineate what type of assessment can be used regarding that determination. However, the policy as a whole, indicates that more likely than not, ASM 170 refers to a comprehensive assessment as that specific assessment can be found over and over again throughout the ASM.

ASM 120 addresses comprehensive assessments and their requirements. ASM 120 specifically indicates that comprehensive assessments require a face to face contact with the client in his/her place of residence. It also indicates that the comprehensive assessment is the primary tool for determining the need for services. Additionally, the policy found above clearly indicates that in order for a client to be eligible for HHS, there must be a need for the service. The need for the service is based off of a complete comprehensive assessment. Policy goes on to say that comprehensive assessments must include face-to-face contact in order to determine the need and does not indicate observations and collateral contacts can take the place of the face-to-face contact.

The Respondent argued that a face-to-face was attempted to address the observations that were made. I however do not find that the attempt that was identified was a sincere attempt. The ASW testified she had fears for her own safety that prevented her from making contact on prior observations. As such, it is not unreasonable for a handicapped/wheelchair bound individual to not answer the door with her [REDACTED] year old granddaughter present not knowing the true identity of the individual on the other side. Certainly when she has no reason to expect anyone. Furthermore, the evidence shows there were no additional attempts for a face-to-face assessment or that notice was ever provided to the Petitioner to notify them of the need for the assessment or schedule a date/time for an assessment.

Based upon the facts presented and the policy both researched and identified, I find the Respondent erred in closing the Petitioner's HHS case. Therefore the Respondent is ordered to initiate the completion of an assessment and retroactively issue HHS benefits back dated to [REDACTED] if otherwise eligible and qualified.


DECISION AND ORDER

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

IT IS THEREFORE ORDERED THAT:

1. The Respondent's decision is **REVERSED**.
2. The Respondent is ordered to initiate the completion of an assessment and retroactively issue HHS benefits back dated to [REDACTED] if otherwise eligible and qualified.

CAA [REDACTED]



Corey A. Arendt
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]

Agency Representative

[REDACTED]

DHHS Department Rep.

[REDACTED]

DHHS -Dept Contact

[REDACTED]

Petitioner

[REDACTED]