



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.: 16-000470
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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, a hearing was held on [REDACTED]. [REDACTED], friend, represented the Petitioner. [REDACTED], the Petitioner, appeared and testified. [REDACTED], Appeals Review Officer represented the Department of Health and Human Services (Department). [REDACTED], Adult Services Specialist, appeared as a witness for the Department. [REDACTED], Adult Services Specialist, was present as an observer.

During the hearing proceedings the Department's Hearing Summary packet for Petitioner's case was admitted as Exhibit A, pp. 1-35. Documentation Petitioner brought to the Department office was forwarded and has been admitted as Exhibit 1, pp. 1-7.

ISSUE

Did the Department properly terminate Petitioner's Home Help Services (HHS) case?

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 Medicaid beneficiary who had been authorized for HHS since [REDACTED]. (Exhibit A, p. 7)

2. The Department received verification of Petitioner multiple diagnoses, which include: chronic kidney failure with kidney transplant [REDACTED], human immunodeficiency virus, anemia, congestive heart failure, parathyroid surgery [REDACTED], hypertension, seizure disorder, atrial mass, cyst on ovaries, chronic pain, anxiety, gastroesophageal reflux disease, end stage renal disease, hypocalcemia, and hypomagnesium. (Exhibit A, pp. 8 and 14)
3. On [REDACTED], the Department received a DHS-54A Medical Needs form completed by Petitioner's doctor, on which the doctor did not mark yes or no to certify whether Petitioner had a medical need for assistance with any of the listed personal care activities, but did circle the activities of bathing, meal preparation, shopping, laundry, and housework. (Exhibit A, p. 14)
4. On [REDACTED], the Adult Services Specialist went to Petitioner's home to conduct a redetermination. Petitioner reported no changes in functional abilities and that the only adaptive equipment she uses is a shower chair. The Adult Services Specialist observed Petitioner walking up and down the 15 steps to her second floor apartment and transferring between sitting and standing positions. (Exhibit A, p. 12; Adult Services Specialist Testimony)
5. On [REDACTED], the Department sent Petitioner an Advance Negative Action Notice informing her that the HHS authorization would be terminated effective [REDACTED], because the most recent assessment did not identify a need for assistance with an activity of daily living (ADL). (Exhibit A, p. 5)
6. Petitioner's Request for Hearing was received by the Michigan Administrative Hearing System on [REDACTED]. (Exhibit A, pp. 4-5)

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 (ASM) 101, 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.

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.

Adult Services Manual (ASM) 101,
December 1, 2013, pp. 1-2 of 5

Adult Services Manual (ASM) 105, 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 indicating a functional limitation of level 3 or greater for at least one activity of daily living (ADL).
- Appropriate Level of Care (LOC) status.

Medical Need Certification

Medical needs are certified utilizing the DHS-54A, Medical Needs, form and must be completed by a Medicaid enrolled medical professional. The medical professional must hold one of the following professional licenses:

- Physician (M.D. or D.O.).

- Physician Assistant.
- Nurse practitioner.
- Occupational therapist.
- Physical therapist.

The DHS-54A or veterans administration medical form are acceptable for individuals treated by a VA physician; see ASM 115, Adult Services Requirements.

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.

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 or her daughter agrees to assist her at no charge. 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 includes such items as walkers, wheelchairs, canes, reachers, lift chairs, bath benches, grab bars and hand held showers.

- 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,
April 1, 2015, pp. 1-4 of 4

Adult Services Manual (ASM) 120, 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 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.

- 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.. This form is primarily used for APS cases.
- Follow rules of confidentiality when home help cases have companion adult protective services 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 level 3 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 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 or her daughter agrees to assist her at no charge. 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 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

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 adjoined 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,
December 1, 2013, pp. 1-6 of 7

Certain services are not covered by HHS. ASM 101 provides a listing of the services not covered by HHS.

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.

Adult Services Manual (ASM) 101,
December 1, 2013, p. 5 of 5.

On [REDACTED], the Department received a DHS-54A Medical Needs form completed by Petitioner's doctor, on which the doctor did not mark yes or not to certify whether Petitioner had a medical need for assistance with any of the listed personal care activities, but did circle the activities of bathing, meal preparation, shopping, laundry, and housework. (Exhibit A, p. 14) This implies that Petitioner's doctor was indicating that Petitioner only had a need for assistance with bathing, meal preparation, shopping, laundry, and housework.

As cited above, the ASM policy requires verification of medical need by a Medicaid enrolled medical professional via the DHS-54A to be eligible for HHS. However, 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. ASM policy also requires that an individual have a need for assistance at functional ranking 3 or greater with at least one ADL activity to be eligible for HHS. Accordingly, while the activities circled by Petitioner's doctor on the [REDACTED], [REDACTED], DHS-54A Medical Needs form including bathing, it is the Adult Services Specialist that must determine whether services would be authorized for Petitioner based on the comprehensive assessment, including whether Petitioner had a need for assistance at functional ranking level 3 or greater with at least one ADL activity.

ASM policy indicates a functional ranking of 3 is appropriate when the activity is performed with some direct physical assistance and/or assistive technology. Further, 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 is to be ranked a level 3 or greater on the functional assessment. This individual would be eligible to receive home help services. ASM policy also states that assistive technology specifically includes items such as bath benches for getting in and out of the bathtub.

During the [REDACTED], home visit, the Adult Services Specialist documented that Petitioner reported no changes in functional abilities and the only adaptive equipment she uses is a shower chair. The Adult Services Specialist observed Petitioner walking up and down the 15 steps to her second floor apartment and transferring between sitting and standing positions during the home visit. The Adult Services Specialist noted that Petitioner also reported being able to drive herself and having her own vehicle. For this assessment the Adult Services Specialist determined Petitioner should be a functional ranking of 1 for bathing as the Adult Services Specialist believed Petitioner would be able to complete this activity on her own whether she had the shower chair or not. Petitioner was also ranked as a functional level 1 for all other ADLs. Accordingly, the

Adult Services Specialist determined that Petitioner was no longer eligible for HHS. (Exhibit A, p. 12; Adult Services Specialist Testimony)

Petitioner asserts that she should have found eligible for ongoing HHS with a functional ranking of level 3 for bathing because she uses a shower chair. Petitioner's Friend testified that Petitioner is unable to stand for prolonged periods due to the problems with her back. Therefore, Petitioner cannot do activities that require standing for longer periods of time, like bathing. (Friend Testimony)

Petitioner testified that going up a flight of stairs is the least of her worries regarding her health. Petitioner noted that her doctor marked lifetime on the [REDACTED], DHS-54A Medical Needs form. (Petitioner Testimony) However, this portion of the form indicated a lifetime need for treatment of the listed diagnoses, not how long Petitioner would need assistance with any of the listed personal care activities. (Exhibit A, p. 14)

Petitioner stated she has no strength and is weak. Petitioner specified that she needs assistance with shopping, bathing, housework, laundry, meal preparation, medication, and shower chair. Petitioner also stated that her sister empties the bedside commode and noted that lately her back is declining. When asked about bathing specifically during the hearing proceedings, Petitioner's testimony was inconsistent. Petitioner initially stated that she can wash herself once she is in the shower. However, Petitioner later began to describe needs for bathing assistance with her hair and back. (Petitioner Testimony)

Petitioner submitted a total of 7 pages of additional documentation. This included medical evidence from as early as [REDACTED] and as recent as [REDACTED]. As discussed during hearing proceedings, the more recent documentation was not available to the Department at the time of the [REDACTED], action. However, it is noted that on the [REDACTED], Disability Certificate, Petitioner's doctor marked "N/A" regarding attendant care, which includes activities such as bathing, dressing, grooming, and using the restroom. (Exhibit 1, p. 2) The older medical documentation is not necessarily relevant to Petitioner's current functional abilities and needs for assistance at the time of the case action at issue. While there were medical reports regarding Petitioner's back that were current for the [REDACTED], case action, it is not clear when copies of these reports were provided to the Department. (Exhibit 1, pp. 1, and 3-5)

In consideration of all of the evidence, the record indicates that there were some overall improvements with Petitioner's condition and functional abilities by the time of the [REDACTED], home visit and [REDACTED], case action. For example, Petitioner was able to drive in [REDACTED], which the doctor indicated Petitioner had been unable to do in [REDACTED]. (Exhibit 1, p. 7; Exhibit A, p. 12; Adult Services Specialist Testimony) Similarly, comparing the information provided by the doctor on the DHS-54A Medical Needs forms from [REDACTED], and [REDACTED], indicates Petitioner's needs for assistance had decreased. (Exhibit 1, p. 7; Exhibit A, p. 14) The evidence does not establish that all of the needs Petitioner indicated in her testimony were reported to the Adult Services Specialist during the

██████████, home visit, such as use of a cane as needed and her sister emptying the bedside commode. (Petitioner Testimony; Exhibit A, p. 12; Adult Services Specialist Testimony) Additionally, Petitioner's testimony regarding her needs was somewhat inconsistent, such as how much assistance she needs with bathing. While the doctor circled bathing on the ██████████, DHS-54A Medical Needs form, the ASM policy is clear that it is the Adult Services Specialist that determines whether services will be authorized for Petitioner based on the comprehensive assessment. The Adult Services Specialist's determination that Petitioner did not have a need for assistance, functional ranking 3 or greater with any ADL, at the time of this ██████████ assessment was supported by the overall information available to her at that time. Accordingly, Petitioner was not eligible for ongoing HHS based on the information available at the time of the ██████████ assessment.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly terminated Petitioner's Home Help Services (HHS) case.

IT IS, THEREFORE, ORDERED that:

The Department's decision is **AFFIRMED**.

CL/cg



Colleen Lack

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

Agency Representative

[REDACTED]

Authorized Hearing Rep.

[REDACTED]

DHHS-Location Contact

[REDACTED]

Petitioner

[REDACTED]

DHHS Department Rep.

[REDACTED]

DHHS -Dept Contact

[REDACTED]