



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.: 16-000637
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], mother and Guardian, appeared on behalf of the Petitioner. [REDACTED] the Petitioner, appeared and testified. [REDACTED] Aunt, appeared as a witness for Petitioner. [REDACTED], Appeals Review Officer, represented the Department of Health and Human Services (Department). [REDACTED], Adult Services Worker (ASW) appeared as a witness for the Department.

During the hearing proceedings the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-46.

ISSUE

Did the Department properly assess 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. On [REDACTED], Petitioner applied for HHS. (Department Exhibit A, p. 10)

2. On [REDACTED], the Department received a DHS-54A Medical Needs form completed by Petitioner's doctor certifying that Petitioner had a medical need for assistance with listed personal care activities. The circled activities were: eating, toileting, grooming, dressing, taking medications, meal preparation, shopping, laundry, and housework. (Department Exhibit A, p. 22)
3. Petitioner has been diagnosed with Autism, mild to moderate mental retardation, and anxiety. (Department Exhibit A, p. 22)
4. On [REDACTED], an ASW completed a home visit initial assessment for the Petitioner's HHS application. The ASW documented observations of Petitioner during the home visit as well as the discussion with Petitioner's mother regarding Petitioner's functional abilities and needs for assistance. (Exhibit A, pp. 17-18)
5. The ASW authorized a total of 30 hours per month of HHS for Petitioner for assistance with the activities of bathing, grooming, dressing, toileting, eating, medication, housework, laundry, shopping, and meal preparation. (Exhibit A, p. 21)
6. On [REDACTED], the Department sent Petitioner a Services and Payment Approval Notice which informed him that he was approved for HHS with a monthly care cost of \$244.73 with a start date of [REDACTED]. (Exhibit 1, pp. 6-7)
7. The Request for Hearing submitted on Petitioner's behalf was initially received by the Michigan Administrative Hearing System (MAHS) on [REDACTED]. (Department Exhibit A, p. 4)
8. On [REDACTED], MAHS issued a letter requesting documentation of legal guardianship or a fully executed power of attorney for representation.
9. The Request for Hearing was re-submitted on [REDACTED], and attached documents included the Re-Issued Letters of Guardianship of Individual with Developmental Disability.

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], Petitioner applied for HHS. (Department Exhibit A, p. 10)

On [REDACTED], the Department received a DHS-54A Medical Needs form completed by Petitioner's doctor. The listed diagnoses were Autism, mild to moderate mental retardation, and anxiety. The doctor certified that Petitioner had a medical need for assistance with listed personal care activities. The circled activities were: eating, toileting, grooming, dressing, taking medications, meal preparation, shopping, laundry, and housework. (Department Exhibit A, p. 22)

On [REDACTED], an ASW completed a home visit initial assessment for the Petitioner's HHS application. The ASW documented observations of Petitioner during the home visit as well as the discussion with Petitioner's mother regarding Petitioner's functional abilities and needs for assistance. (Exhibit A, pp. 17-18) The ASW that completed the home visit was not present to testify during the hearing proceedings. The ASW authorized a total of 30 hours per month of HHS with a total care cost of \$244.73 for Petitioner for the activities of bathing, grooming, dressing, toileting, eating, medication, housework, laundry, shopping, and meal preparation. (Exhibit A, p. 21)

Petitioner's mother contests the HHS authorization noting that this is less than \$349.16 that had been authorized for Petitioner before another Department worker closed his prior HHS case. (Exhibit A, p. 4) However, for this appeal, the analysis will focus on the current HHS assessment and authorization.

Petitioner's mother asserted that the ASW did not see Petitioner during the home visit. It was explained that while Petitioner was home, he would not have come out unless called by his mother and the ASW did not ask for Petitioner to come out during the home visit. Petitioner's mother testified that she does everything for Petitioner. This includes administering medications, wiping after a bowel movement, cutting hair, clipping nails, washing face, cutting his food to prevent choking, and help on outings. Additionally, assistance is provided with washing all Petitioner's clothes and cooking his meals separate from the rest of the household. Petitioner's mother explained that meal preparation for Petitioner is separate because he does not like what the rest of the family likes to eat and laundry is separate because Petitioner has accidents. (Mother Testimony)

As set forth in the above cited ASM policies, HHS only compensates for specific activities. Accordingly, not all of the assistance Petitioner's mother is providing would be included in the HHS program, such as: any monitoring, guiding, supervision, or prompting; help during outings; and preparing meals separately for Petitioner because of his preferences rather than a special dietary need.

However, the available evidence does not support all of the time and task authorizations for this assessment. As noted above, the ASW that completed this assessment was not present at the hearing. Accordingly the Department's witness was not able to testify about the accuracy of the ASW's notes from the home visit or provide more information. The testimony of Petitioner's mother indicates that some of the information documented by the ASW was inaccurate. Examples include the activities of dressing and eating.

Regarding dressing the ASW assessed Petitioner as functional level 3 and indicated assistance is only provided 3 days per week with ties buttons, cuffs, socks, and shoes for church. (Exhibit A, p. 13) The ASW authorized 14 minutes 3 days per week for dressing assistance. (Exhibit A, p. 21) Petitioner's mother credibly testified that Petitioner only wears slip on shoes to church on Sunday for two hours, wears gym shoes the rest of the time, and needs assistance with laces. Accordingly, assistance with shoes would not be provided for the slip on shoes worn to church, but would be provided daily with the gym shoes.

Regarding eating, the ASW assessed Petitioner at functional level 3 for eating noting that assistance is provided with cutting up meat 4 days per week. (Exhibit A, p. 13) The ASW authorized 2 minutes 4 days per week for eating assistance. (Exhibit A, p. 21) Petitioner's mother testified that she cuts up food for Petitioner every day. In light of Petitioner's mother's testimony regarding choking, it is not clear what the basis was for the ASW documenting that assistance with cutting up food is only provided four days per week.

Additionally, the ASW assessed Petitioner at functional level 5 for laundry noting that the Provider completes all laundry. (Exhibit A, p. 14) Per the ASM policy, a maximum of 7 hours of HHS can be authorized for the IADL of laundry, which must be prorated by one half in shared living arrangements unless there is a clearly documented reason laundry is performed separately. One half of 7 hours per month would be 3 hours and 30 minutes per month. Even if the ASW had not been aware of any regularly recurring incontinence issues, the ASW only authorized 2 hours and 9 minutes for laundry assistance. (Exhibit A, p. 21)

Overall, the available evidence does not support all of the time and task authorizations for this assessment. Accordingly, the Department's determination is reversed and Petitioner's HHS case should be re-assessed.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department did not properly assess Petitioner's HHS case.

IT IS, THEREFORE, ORDERED that:

The Department's decision is **REVERSED**. The Department shall initiate a re-assessment of Petitioner's HHS case and issue written notice of the new determination.

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

DHHS

[REDACTED]

Agency Representative

[REDACTED]

DHHS Department Rep.

[REDACTED]

DHHS -Dept Contact

[REDACTED]

Authorized Hearing Rep.

[REDACTED]

Petitioner

[REDACTED]