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 29, 2016
MAHS Docket No.: 16-000657
Agency No.: [redacted]
Petitioner: [redacted]

ADMINISTRATIVE LAW JUDGE: Landis Lain

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]. Petitioner's Authorized Hearings Representative and live-in care provider, [redacted], appeared and testified on Petitioner's behalf. Petitioner appeared and testified. [redacted], Appeals Review Officer, represented the Department of Health and Human Services (the Department). [redacted], Adult Services Specialist appeared and testified as a witness for the Department.

State's Exhibit A pages 1-42 and Petitioner's Exhibits 1-3 were admitted as evidence.

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 Medicaid beneficiary who receives SSI benefits.
2. Petitioner is an American citizen.
3. She speaks [redacted].
4. The provider appeared to translate for Petitioner.
5. Petitioner's date of birth is [redacted]. She is [redacted] years old.
6. Petitioner has been in the United States for [redacted] years.

7. Petitioner alleges as diagnoses: legal blindness, uncontrolled diabetes mellitus, overweight, muscle spasms, low vitamin D, eye pain, primary artery disease, low back pain, ear problems, degenerative joint disorder, hypertension, and Chronic Obstructive Pulmonary Disease. (Respondent's Exhibit A page 18)

8. Petitioner was given Time and Task approval for bathing, grooming, dressing, toileting, eating, mobility, medication, housework, Laundry, shopping and meal preparation. (Respondent's Exhibit A page 17)

9. Petitioner was receiving HHS in the gross amount of $[redacted]. (Respondent's Exhibit A page 6)

10. On [redacted], the Adult Services Worker conducted an in-home assessment with Petitioner. (Respondent's Exhibit A page 12)

11. The Adult Services Worker (ASW) determined that Petitioner should have a ranking of '3' for bathing, '4' for grooming, '3' for dressing, '4' for toileting, '1' for transferring, '1' for continence, '3' for eating '3' 'for mobility, '3' for medication, '4' for housework, laundry, shopping and meal preparation. (State's Exhibit A page 17)

12. The Department caseworker notes that Petitioner needs assistance with bathing: *Client needs help in and out of the tub. Need some assistance with bathing and washing*.

13. The Department caseworker notes that Petitioner needs assistance with grooming – *Client is legally blind, need help with hair and trimming nails*.

14. The Department caseworker notes that Petitioner needs assistance with dressing – *Client is legally blind unable to see to put clothes on properly*. (Respondent's Exhibit A page 17)

15. The Department caseworker notes that Petitioner needs assistance with toileting – *Client wears diapers*.

16. The Department caseworker notes that Petitioner needs assistance with mobility – *Client uses white cane for blindness, straight cane. (Mobility outside the home)*.

17. The Department caseworker notes that Petitioner needs assistance with medication.

18. The Department caseworker notes that Petitioner needs assistance with housework, laundry, shopping and meal preparation – *legally blind, limited endurance*. (Respondent's Exhibit A page 17)

19. On [redacted], the provider was enrolled in the CHAMPS system.

20. A payment Approval Notice was sent to Petitioner notifying her that HHS benefits were approved in the amount of $[redacted] effective [redacted].

21. On [redacted], Petitioner filed a request for a hearing to contest the amount of approved HHS benefits.

22. On [redacted], the Adult Services Worker completed a six month review where both the Petitioner and Provider were present. During the comprehensive assessment the Petitioner informed the worker that her functional abilities remained the same.

23. The worker made no changes to the personal care time and task allocations.

24. On [redacted], the provider requested an increase in HHS.

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.

A referral may be received by phone, mail or in person and must be entered on ASCAP upon receipt. The referral source does not have to be the individual in need of the services. The adult services specialist must determine eligibility within the 45 day standard of promptness which begins from the time the referral is received and entered on ASCAP. The referral date entered on ASCAP must be the date the referral was received into the local office. The computer system calculates the 45 days beginning the day after the referral date and counting 45 calendar days. If the due date falls on a weekend or holiday, the due date is the next business day.

When a signed DHS-390 serves as the initial request for services, the referral date must be the date the application was received in the local office. ASM 110, page 1

Adult Services Manuals 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. Pertinent department policy states:

> **Home Help Payment Services**
>
> 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) 120*

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 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. ASm 120, pages 1-2

The **Bridges Eligibility** module in **ASCAP** contains information pertaining to the client's type of assistance (TOA) eligibility, scope of coverage and level of care.

The **Medical** module in **ASCAP** contains information regarding the physician(s), diagnosis, other health issues, adaptive equipment, medical treatments and medications. The medical needs certification date is entered on the diagnosis tab, at initial certification and annually thereafter, if applicable; see ASM 115, Adult Services Requirements.

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.

Complex Care Needs

Complex care refers to conditions requiring intervention with special techniques and/or knowledge. These complex care tasks are performed on client's whose diagnoses or conditions require more management. The conditions may also require special treatment and equipment for which specific instructions by a health professional or client may be required in order to perform.

- Eating and feeding.
- Catheters or legs bags.
- Colostomy care.

- Bowel program.
- Suctioning.
- Specialized skin care.
- Range of motion exercises.
- Peritoneal dialysis.
- Wound care.
- Respiratory treatment.
- Ventilators.
- Injections.

When assessing a client with complex care needs, refer to the complex care guidelines on the adult services home page.

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.

Expanded home help services (EHHS) exists if all basic home help services eligibility criteria are met and the assessment indicates the client's needs are so extensive that the cost of care cannot be met within the monthly maximum payment level of $549.99.

In the instant case, Petitioner and her provider live together. Therefore, IADLs are prorated per Department policy. Petitioner has not established that her needs are so extensive that the cost of care cannot be met within the monthly maximum payment level. Petitioner requested the following in her Request for Hearing: 1. Adjustment/Increase in personal care/home making hours; 2. Supplemental/Waiver Program for additional hours; 3. State of Michigan to back pay Medicare Part A, B, d; and 4. State of Michigan to reinstate Medicare Part A, B, D.

At the hearing, Petitioner submitted a letter from her doctor dated [redacted] and documents listing Petitioner's list of diagnoses and a partial medical report from [redacted]. (Petitioner's Exhibit 1-3)

For this hearing, the only issues addressed are the request for adjustment in payment for Home Help Services. The other issues must be addressed in an eligibility determination hearing. Petitioner testified that the caseworker is lying and the information in her notes is inaccurate.

This Administrative Law Judge determines that evidence on the record indicates:

On [redacted], the Department caseworker conducted an initial in-home assessment with Petitioner. The provider did have notice of the assessment but was not present. Petitioner was noted to speak little English but was able to communicate that she was feeling weak, dizzy and had nausea. She appeared very weak. The Petitioner reported that she needs help with bathing, grooming her hair and dressing as she cannot see to put clothing on. She wears diapers. She uses her hands to feed herself. Petitioner moved around the apartment independently, but needs assistance outside the home due to blindness. Petitioner was unable to perform any IADLs due to blindness and not being steady on her feet. The caseworker asked Petitioner if she wanted an ambulance. Petitioner gave the caseworker the provider's telephone number. The

caseworker contacted the provider, who was at school. She stated that she was on the way home and would be there in 20 minutes. The caseworker contacted Emergency Medical Services (EMS). While waiting for EMS, the client reported that she resided with the provider. She receives Medicaid. She has diabetes, hypertension and mild Chronic Obstructive Pulmonary disease. She is legally blind. She stated that she does not have a primary care physician, so she goes to urgent care. Petitioner recently moved to Michigan and doctors told her that she did not have Medicaid. EMS arrived and took Petitioner's vital signs. Her blood pressure and blood sugar were normal. The provider arrived and translated the EMS workers. The Department caseworker provided medical forms which needed to be completed. (Respondent's Exhibit A page 12)

On [redacted], the worker called the provider to inquire about Petitioner's status. The provider stated that the Petitioner was doing well. The provider gave the caseworker the doctor's name. The provider stated that she assists with bathing, getting in/out of tub, washing her back and hair. The provider stated that she assists with grooming, dressing, toileting, mobility, medication and IADLs. (Respondent's Exhibit A page 11)

On [redacted], the caseworker returned a phone call to the provider and let her know that she had not received the doctor's form and that the doctor must fill out the form which would be faxed to the doctor for completion. (Respondent's Exhibit A page 11)

On [redacted], the provider met with the caseworker. The Specialist informed provider of how she needed to fill out ESV logs. Provider was not satisfied with the amount of approved HHS and stated that she received more when she lived in Minnesota. The specialist advised her that time and tasks determinations were based upon the assessment, observation, client's statement and medical needs for and diagnosis.

The caseworker testified that she conducted the in-home assessment and Petitioner was able to communicate sufficiently to let the caseworker know what she needed assistance with. The Department caseworker's notes and testimony were consistent and credible throughout the hearing.

The Department has established by the necessary competent, substantial and material evidence on the record that it was acting in accordance with Department policy when it determined the HHS amount based upon the information that she available to her at the time of assessment. Petitioner has not established that she has a medical necessity for an increase for HHS services. The caseworker should conduct an updated assessment in light of additional or updated medical evidence which establishes that the Petitioner may need additional HHS assistance and because Petitioner has asked for an updated assessment. The caseworker agreed to provide information to Petitioner about the Medicaid Waiver program which may have more assistance to offer Petitioner that HHS. The department's determination must be upheld.

Clients have the right to be treated with dignity and respect. For general complaints for all programs, clients have the right to make complaints to the:

Michigan Department of Health and Human Services
Specialized Action Center
235 S. Grand Avenue
P.O. Box 30037
Lansing, MI 48909
Or call (855) 275-6424 or (855) ASK-MICH.

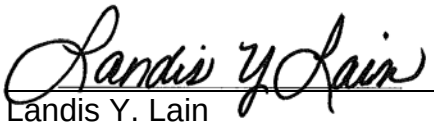
Complaints that are deemed to be potential ADA or discrimination claims will be routed directly to the county director. The county director will use the Office of Human Resources (OHR) to properly address all aspects of the allegations. All other complaints that come through the Specialized Action Center will be routed to the customer information specialist in the district/county office for follow-up. Bridges Administrative Manual (BAM) 105, page 3. Petitioner must make her complaint to the Department for a change in caseworkers.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly assessed the Petitioner's HHS based on the available information.

IT IS THEREFORE ORDERED THAT:

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



LL/[redacted]

Landis Y. Lain
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]

Petitioner [redacted]

Authorized Hearing Rep. [redacted]

DHHS Department Rep. [redacted]

DHHS -Dept Contact [redacted]

DHHS-Location Contact [redacted]