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.: 16-001021
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], the Petitioner, appeared on her own behalf. [redacted], Appeals Review Officer, represented the Department of Health and Human Services (Department). [redacted], Adult Services Specialist; [redacted], Adult Services Specialist; [redacted], Adult Services Supervisor; and [redacted], Adult Services Specialist, appeared as witnesses for the Department.

During the hearing proceedings, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-54.

ISSUE

Whether the Department properly stop authorizing Home Help Services (HHS) payments to Petitioner around [redacted]?

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 has been authorized for HHS since [redacted] (Exhibit A, p. 16)

2. Petitioner's HHS case was due for a Redetermination around [redacted]. (Exhibit A, p. 22)

3. The Department stopped issuing HHS payments for Petitioner's case until the Redetermination could be completed. It is unclear whether the last payment issued was for HHS services for [redacted]. (Exhibit A, pp. 4, 22, and 27-28)

4. On [redacted], an Advance Negative Action Notice was issued to Petitioner stating the HHS case would be terminated effective [redacted], because the personal care log for [redacted] had not been submitted. It was noted that the provider must register and complete the log. (Exhibit A, pp. 5-7)

5. The Department did not implement the proposed termination of Petitioner's HHS case effective [redacted]. (Testimony of Adult Services Specialist Mathews)

6. On [redacted], an Advance Negative Action Notice was issued to Petitioner stating the HHS case would be terminated effective [redacted]. It was noted that a scheduled appointment was missed on [redacted] and that a second appointment was scheduled for [redacted]. If Petitioner failed to keep the second appointment, and failed to contact the Adult Services Specialist to re-schedule the appointment if there was a scheduling conflict, it would be assumed that Petitioner was no longer in need of HHS and the case would be terminated. (Exhibit A, pp. 8-10)

7. The Department did not implement the proposed termination of Petitioner's HHS case effective [redacted]. (Testimony of Adult Services Specialist Mathews)

8. There were additional delays with the Department completing the required Redetermination, including paperwork being mailed to Petitioner's old address and the doctor's office not properly completing the DHS-54A Medical Needs form. (Testimony of Petitioner and Adult Services Specialists Brown and Mathews; Exhibit A, pp. 22-23, and 25)

9. On [redacted] the home visit for the Redetermination was completed. (Exhibit A, p. 24)

10. On [redacted], an Advance Negative Action Notice was issued to Petitioner stating the HHS case would be terminated effective [redacted], because the Department requires the need for hands on services of at least one activity of daily living (ADL); the most recent DHS-54 A and/or the most recent assessment conducted did not identify a need for an ADL; therefore, Petitioner is not eligible for HHS. (Exhibit A, pp. 11-14)

11. Petitioner's Request for Hearing was received by the Michigan Administrative Hearing System on [redacted], contesting not receiving HHS since [redacted] (Exhibit A, p. 4)

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.

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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) 115, addresses the Medical Needs form:

MEDICAL NEEDS FORM (DHS-54A)

The DHS-54A, Medical Needs form must be signed and dated by a medical professional certifying a medical need for personal care services. The medical professional must be an enrolled Medicaid provider and hold one of the following professional licenses:

- Physician (M.D. or D.O.).
- Physician assistant.
- Nurse practitioner.

- Occupational therapist
- Physical therapist.

The medical needs form is only required at the initial opening for SSI recipients and disabled adult children (DAC). All other Medicaid recipients must have a DHS-54A completed at the initial opening and annually thereafter.

The client is responsible for obtaining the medical certification of need but the form must be completed by the medical professional and not the the (SIC) client. The National Provider Identifier (NPI) number must be entered on the form by the medical provider and the medical professional must indicate whether they are a Medicaid enrolled provider.

The medical professional certifies that the client's need for service is related to an existing medical condition. **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.

If the medical needs form has not been returned, the adult services specialist should follow-up with the client and/or medical professional.

Do **not** authorize home help services prior to the date of the medical professional signature on the DHS-54A.

The medical needs form does not serve as the application for services. If the signature date on the DHS-54 is **before** the date on the DHS-390, payment for home help services must begin on the date of the application.

Example: The local office adult services unit receives a DHS-54A signed on 1/18/2014 but a referral for home help was never made. The adult services staff enters a referral on ASCAP and mails an application to the client. The application is returned to the office with a signature date of 2/16/2014. Payment cannot begin until 2/16/2014, or later, if the provider was not working during this time period.

If the case is closed and reopened within 90 days with no changes in the client's condition, a new DHS-54A is not necessary.

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.

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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.

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.

Suspension of Home Help Payments

The adult services specialist may choose to suspend payments, rather than terminate payments and initiate closing procedures, in the following circumstances:

- Client's Medicaid has ended and it appears to be temporary.
- Client's provider fails to meet qualification criteria. This allows the client time to locate a new provider.
- Provider logs were not submitted timely but it is believed the client and provider will return completed forms within a specified time period noted on a negative action notice.

Note: Any suspended payment action must be temporary. The adult services specialist should allow no more than 90 days for the situation to be resolved. (The DHS-390, Adult Services Application and the DHS-54A, Medical Needs form, are valid for 90 days after case closure). Case closure procedures should be initiated once it has been determined the situation that resulted in the suspension will not be resolved.

Notification of the Negative Action

When home help services are terminated, suspended or reduced for **any** reason, a DHS-1212, Advance Negative Action Notice, must be generated

in **ASCAP** and sent to the client advising of the negative action and explaining the reason for the action; see ASM 150, Notification of Eligibility to determine need for 10 business day notice of action.

A copy of the DCH-0092, Request for Hearing form is automatically generated from ASCAP when the DHS-1212 is printed. This must be forwarded to the client with the negative action notice.

Adult Services Manual (ASM) 170,
May 1, 2013, p. 1-2 of 3.
(Underline added by ALJ)

In this case, Petitioner's testimony and Request for Hearing indicate she is contesting not receiving HHS since [redacted]. Petitioner is not contesting the termination of her HHS case effective [redacted]. (Testimony of Petitioner and Exhibit A, p. 4)

The ASM policy, as written, presumes that reviews and redeterminations will be completed timely. The policy does not specifically address when a HHS Redetermination is completed about six months late and whether HHS payments should be issued for the time period the Redetermination was pending.

As discussed during the hearing proceedings, this ALJ understands that the Department's computer system does not allow for payments to be authorized once a case is overdue for the annual Redetermination. However, ASM 170 requires that a DHS-1212, Advance Negative Action Notice, be sent to the client advising of the negative action and explaining the reason for the action whenever there is a termination, suspension or reduction for any reason. The Department has not presented any evidence that Petitioner was issued any written notice that the HHS payments would stop around [redacted] until the Redetermination could be completed. Further, if the Department was going to suspend payments until the Redetermination could be completed, the suspension should not have lasted more than 90 days. Pursuant to ASM 170, any suspended payment action must be temporary and the adult services specialist should allow no more than 90 days for the situation to be resolved.

Petitioner's testimony indicated that at least part of the delay for completing the Redetermination was because the Department issued the required paperwork to her old address. An [redacted], contact note documents a call from Petitioner reporting that she just received her forms and needs time to gather the information. (Exhibit A, p. 22)

Further, there were delays with the doctor's office not properly competing the DHS-54A Medical Needs form. It appears that the Department may have initially received this medical certification on [redacted]. (Exhibit A, p. 17) The narrative notes indicate follow up calls were made to the doctor's office in October and [redacted]. While the updated DHS-54A Medical Needs form received on [redacted] did not have a signature date, the Adult Services Specialist testified it was accepted as a valid medical certification. (Exhibit A, pp. 23 and 25; Testimony of Adult Services Specialist Mathews)

The Appeals Review Officer cited the sentence in ASM 115 that states HHS is not to be authorized prior to the date of the medical professional signature on the DHS-54A. The Appeals Review Officer noted that when the updated DHS-54A Medical Needs form was received on [redacted], it did not have a signature date. As noted above, the Adult Services Specialist testified that the Department accepted the [redacted], [redacted], DHS-54A as valid. Additionally, as that section of ASM 115 policy continues, it addresses the HHS payment begin date for new HHS applications in relation to the signature date on the DHS-54A and the application date. Petitioner's case was an ongoing HHS case, not a new application. Accordingly, there would have been a previous medical certification. Additionally, there was some evidence that the Department initially mailed the required forms for this Redetermination, including the DHS-54A, to Petitioner's old address. This would have delayed when Petitioner could get the form to the doctor's office, preventing a timely return of the medical certification. It is noted that on the DHS-54A, the doctor indicated the date Petitioner was last seen was [redacted], which would be relevant for a [redacted] Redetermination. (Exhibit A, p. 25)

It is also noted that the Department would not schedule the required home visit for the Redetermination until the completed medical certification was received. (Testimony of Adult Services Specialist Mathews; Exhibit A, p. 23) This further delayed the completion of the Redetermination of Petitioner's HHS case.

The testimony of Adult Services Specialist Mathews testified that when the home visit was completed on [redacted], her assessment was only for Petitioner's current and ongoing needs, and did not assess Petitioner's needs going back to when the Redetermination was due. Adult Services Specialist Mathews indicated the effective date of [redacted], was correct for her assessment. (Testimony of Adult Services Specialist Mathews)

Overall, the evidence does not establish that the Department issued the required advance negative action notice of the suspension of Petitioner's HHS payments around [redacted] pending completion of the Redetermination. Further, the evidence indicates that when the Redetermination was eventually completed, there was still no assessment of Petitioner's needs and eligibility going back to when the HHS payments stopped, around [redacted]. Rather, the Adult Services Specialist only assessed Petitioner's current and ongoing functional abilities, needs for assistance and

eligibility for HHS. Accordingly, the [redacted], Advance Negative Action Notice stated the termination would be effective [redacted].

Petitioner's HHS case should be reviewed to determine whether HHS payments should be issued for any time period(s) between [redacted] and [redacted], to include allowing for the submission of any needed documentation. For example, provider logs or other documentation to establish whether services were provided by an enrolled HHS provider during that time period. Also, Petitioner's hearing request noted that she had surgeries in [redacted]. (Exhibit A, p. 4) If there were any hospital admissions, Petitioner would not be eligible for HHS during the hospitalizations.

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 stop authorizing Home Help Services (HHS) payments to Petitioner around [redacted]

IT IS, THEREFORE, ORDERED that:

The Department's decision is **REVERSED**. The Department shall initiate a review Petitioner's HHS case to determine whether HHS payments should be issued for any time period between [redacted] and [redacted], to include allowing for the submission of any needed documentation and issuing written notice of the determination, in accordance with Department policy.

Colleen Lack

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 Department Rep. [redacted]

DHHS -Dept Contact [redacted]

Petitioner [redacted]

DHHS-Location Contact [redacted]