



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: April 12, 2016
MAHS Docket No.: 16-001752
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 daughter and provider, [REDACTED], appeared and testified on behalf of the Petitioner. [REDACTED], Appeals Review Officer; [REDACTED], Adult Services Worker (ASW); [REDACTED], (ASW); and [REDACTED], Service Program Manager, appeared to testify on behalf of Respondent Department of Health and Human Services (Department or Respondent or State).

State's Exhibit A pages 1-80 were admitted as evidence.

ISSUE

Did the Department properly determine the amount of 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 recipient, date of birth [REDACTED].
2. Petitioner was receiving HHS in the amount of \$ [REDACTED] per month for shopping and housework. [REDACTED] Services was providing the services. (State's Exhibit A page 22)
3. On [REDACTED], Petitioner's provider e-mailed the Department Adult Services worker to notify her that she would like to apply to re-

activate her account as Petitioner's provider effective [REDACTED].
(State's Exhibit A page 34)

4. Petitioner alleges as disabling conditions: renal transplant; hypertension; dementia, chronic knee pain, deep vein thrombosis and ataxia. (State's Exhibit A page 9)
5. On [REDACTED], the ASW conducted an annual review with Petitioner and her provider, [REDACTED] who would come to Petitioner's home four days per week Friday to Monday. (State's Exhibit a page 35)
6. The caseworker determined that that Petitioner needed assistance with grooming, incontinence, mobility, medications, housework, meal preparation, shopping and laundry. (State's Exhibit A page 19)
7. The caseworker determined that Petitioner cannot reach and does not remember to manage toe nail care. Provider does the care two times per month. (State's Exhibit A page 19)
8. The caseworker determined that Petitioner is incontinent and wears adult briefs. (State's Exhibit A page 19)
9. The caseworker determined that Petitioner has a pill box which is filled weekly, but her vision is limited and needs reminders to take medication. (State's Exhibit A page 19)
10. The caseworker determined that Petitioner uses a walker for all mobilizing and cannot perform housework, but she can sometimes wipe off the counter. (State's Exhibit A page 19)
11. The caseworker determined that Petitioner can fold laundry while seated. She cannot carry the basket, load or unload the unit. The provider performs the task once per week. (State's Exhibit A page 19)
12. The caseworker determined that Petitioner can accompany the provider to the store. She goes to a specialty [REDACTED] ethnic food store. She cannot drive, carry, load, unload or put away groceries. (State's Exhibit A page 19)

13. The caseworker determined that Petitioner can reheat in the microwave but the provider makes sauce, rice and meats for African soups in five quart buckets. (State's Exhibit A page 20)
14. The caseworker determined that Petitioner needs help getting in and out of the bath tub as she has fallen a lot in the past. Petitioner is able to wash her body on her own. (State's Exhibit A page 20)
15. The caseworker determined that Petitioner needs help with walking around the home. She has fallen in the past and unsteady in her walk and needs assistance. (State's Exhibit A page 20)
16. On [REDACTED], the Adult Services Worker sent Petitioner a DHS-1210 Services and Payment Approval Notice informing her that Home Help Services would be approved, in the amount 29:22 hours per month or \$ [REDACTED] per month. (State's Exhibit A page 11)
17. The Adult Services Worker (ASW) approved Petitioner for assistance with shopping, grooming, medication, laundry and, meal preparation. (State's Exhibit A page 12)
18. A [REDACTED] confirmation of payment warrants indicates that Petitioner's provider was paid \$ [REDACTED] in [REDACTED]; \$ [REDACTED] in [REDACTED]; \$ [REDACTED] in [REDACTED]; \$ [REDACTED] in [REDACTED]; \$ [REDACTED] in [REDACTED]; and \$ [REDACTED] in [REDACTED]. (State's Exhibit A page 8)
19. On [REDACTED], the Department received a DHS 54A Medical Needs form which indicated that Petitioner has a certified medical need for assistance with toileting, bathing, grooming, meal preparation, shopping, laundry, and housework. (State's Exhibit A page 24)
20. On [REDACTED], the Michigan Administrative Hearings Department received a Request for Hearing from Petitioner to contest the amount of HHS approved. (State's Exhibit A pages 4-5)
21. On [REDACTED], another DHS-1210 Services and Payment Approval Notice was sent to Petitioner by the new Adult Services Worker, informing Petitioner that she is approved for increased HHS payments in the amount \$ [REDACTED] per month beginning [REDACTED]. (State's Exhibit A page 15)

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, 12-1-13, 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.

**Adult Services Manual (ASM) 101,
12-1-2013, Page 1 of 4.**

Adult Services Manual (ASM) 105, 12-1-13, 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 (DHS-324) indicating a functional limitation of level 3 or greater for activities of daily living (ADL).
- Appropriate Level of Care (LOC) status.

Necessity For Service

The adult services specialist is responsible for determining the necessity and level of need for home help services based on:

- 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.

Example: Ms. Smith is assessed at a level 4 for bathing however she refuses to receive assistance. Ms. Smith would be eligible to receive assistance with IADL's if the assessment determines a need at a level 3 or greater.

- 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,
12-1-13, Pages 1-3 of 3**

Adult Services Manual (ASM 120, 12-1-2013), pages 1-4 of 5 addresses the adult services comprehensive assessment:

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 will 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; see RFF 1555. The form is primarily used for APS cases.
- Follow rules of confidentiality when home help cases have companion APS 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 3 level 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.

Example: Ms. Smith is assessed at a level 4 for bathing however she refuses to receive assistance. Ms. Smith would be eligible to receive assistance with IADLs if the assessment determined a need at a level 3 or greater.

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 higher, 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 rationale **must** be provided.

An assessment of need, at a ranking of 3 or higher, 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 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, 12-1-2013,
Pages 1-5 of 5**

Responsible Relatives

A responsible relative is defined as an individual's spouse or a parent of an unmarried child under age 18.

Activities of daily living (ADL) may be approved when the responsible relative is **unavailable** or **unable** to provide these services.

Note: Unavailable means absence from the home for an extended period due to employment, school or **other legitimate reasons**. The responsible relative must provide a work or school schedule to verify they are unavailable to provide care. **Unable** means the responsible person has disabilities of their own which prevent them from providing care. These disabilities must be documented and verified by

a medical professional on the DHS-54A, Medical Needs form.

Do **not** approve shopping, laundry, or light housecleaning, **when a responsible relative of the client resides in the home, unless** they are unavailable or unable to provide these services. Document findings in the general narrative in ASCAP.

Department policy explicitly states in ASM 101, age 5, Home help services must not be approved for the following:

- Supervising, monitoring, reminding, guiding, teaching or encouraging.
- Transportation.
- Adult or child day care.

Petitioner's provider testified that she provides 29 hours of care for her mother per week and she has been given only seven hours per week in payment. Petitioner stated that she performs meal preparation daily from Monday to Sunday. She helps with housework, medication and meal preparation. (State's Exhibit A page 36) She came home from Australia to provide care for her mother because the agency was not providing her mother with adequate HHS. Further, Petitioner's provider alleges that the ASW is friends with the previous provider and that is why the ASW cut Petitioner's provider's pay. (State's Exhibit A page 37; Testimony)

This Administrative Law Judge finds that the Department has established by the necessary competent, substantial and material evidence on the record that it was acting in compliance with department policy when it determined that Petitioner was entitled to receive 29.22 hours/\$[REDACTED] per month of HHS. The Department properly increased the amount to \$[REDACTED] because the minimum wage increased. Amounts received in [REDACTED] are not necessarily relevant to the Petitioner's current situation, as her situation may have changed. Evidence on the record did not establish that there was collusion between the ASW and the prior provider to defraud Petitioner of HHS. The Department's determination must be upheld.


DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly determined that Petitioner was entitled to 29:22 hours per month of HHS under the circumstances.

IT IS, THEREFORE, ORDERED that:

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

LL ■



Landis 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]

Authorized Hearing Rep.

[REDACTED]

DHHS-Location Contact

[REDACTED]

DHHS Department Rep.

[REDACTED]

DHHS -Dept Contact

[REDACTED]

Petitioner

[REDACTED]