



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
MAHS Docket No.: 16-001931
[REDACTED]
[REDACTED]

ADMINISTRATIVE LAW JUDGE: Steven Kibit

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.*, and upon the Petitioner's request for a hearing.

After due notice, a telephone hearing was held on [REDACTED] [REDACTED], a representative from the agency providing Petitioner's care, appeared and testified on Petitioner's behalf. [REDACTED], Petitioner's case worker at the care provider agency, also testified as a witness for Petitioner. [REDACTED], Appeals Review Officer, represented the Respondent Department of Health and Human Services (Department). [REDACTED], Adult Services Worker (ASW), testified as a witness for Respondent.

ISSUES

Did the Department properly deny Petitioner's request for approval of earlier and 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 an [REDACTED]-year-old Medicaid beneficiary who has been diagnosed with dementia, hypertension, osteoporosis, and cataracts. (Exhibit A, pages 11, 13).
2. On [REDACTED], Petitioner was referred for HHS through the Department. (Exhibit A, page 20).
3. As part of her application, Petitioner submitted a Medical Needs Form

signed by her doctor on [REDACTED]. (Exhibit A, page 20).

4. On [REDACTED], the ASW completed an initial assessment with Petitioner, Petitioner's grandson, and Petitioner's representative in Petitioner's home. (Exhibit A, page 16).
5. During that assessment, Petitioner's grandson translated for Petitioner. (Exhibit A, page 16; Testimony of Petitioner's representative).
6. Following that assessment, the ASW ranked Petitioner a "3" in the activities of bathing, grooming, dressing, toileting, taking medications, housework, laundry, shopping, and meal preparation. (Exhibit A, page 14).
7. She also determined that Petitioner should be approved for assistance with bathing [REDACTED] minutes per day, [REDACTED] days per week; assistance with grooming [REDACTED] minutes per day, [REDACTED] day per week; assistance with dressing [REDACTED] minutes per day, [REDACTED] days per week; assistance with taking medications [REDACTED] minutes per day, [REDACTED] days per week; assistance with housework [REDACTED] minutes per day, [REDACTED] days per week; assistance with laundry [REDACTED] minutes per day, [REDACTED] days per week; assistance with shopping [REDACTED] minutes per day, [REDACTED] day per week; and assistance with meal preparation [REDACTED] minutes per day, [REDACTED] days per week. (Testimony of ASW).
8. Petitioner's case, was given an "Open Date" of [REDACTED] (Exhibit A, page 12).
9. On [REDACTED], the ASW sent Petitioner a written Services and Payment Approval Notice. (Exhibit A, page 7).
10. Specifically, that notice provided that Petitioner was approved for [REDACTED] of HHS per month. (Exhibit A, page 7).
11. The notice also provided: "Start date: [REDACTED] Comment: An assessment was completed on 1[REDACTED]. [REDACTED] can begin on or after 1[REDACTED]" (Exhibit A, page 12).
12. The second start date identified in the notice was incorrect and the ASW's intent was to approve a start date of [REDACTED], as the notice of approval first indicated. (Testimony of ASW).
13. The ASW chose that start date in order to allow for time for the notice to reach Petitioner in the mail prior to the start date. (Testimony of ASW).
14. On [REDACTED] the Michigan Administrative Hearing System

(MAHS) received the request for hearing filed by Petitioner and her representative in this matter. (Exhibit A, page 6).

15. In that request, Petitioner argues both that the start date for the approval should be earlier and that the amount of the approval should be more. (Exhibit A, page 6).

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 physician and may be provided by individuals or by private or public agencies.

Adult Services Manual 115 (4-1-2015) (hereinafter "ASM 115") addresses Adult Services Requirements and provides in part:

APPLICATION FOR SERVICES (DHS-390)

The client must complete and sign a DHS 390, Adult Services Application to receive independent living services. An authorized representative or other person acting for the client may sign the DHS-390 if the client either:

- Is incapacitated.
- Has a court-appointed guardian.

A client unable to write may sign with an X, witnessed by one other person (for example, relative or department staff). The adult services specialist **must not** sign the DHS-390 on behalf of the client.

The DHS-390 remains valid unless the case record is closed for more than 90 days.

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.

Veteran's Administration (VA)

The Michigan Department of Community Health (MDCH) will accept a DHS-54A completed by a Veteran's Administration physician or the VA medical form in lieu of the medical needs form.

COMPREHENSIVE ASSESSMENT (DHS-324)

Conduct a face-to-face interview with the client in their home to assess the personal care needs. Complete the DHS-324, Adult Services Comprehensive Assessment which is generated from the Adult Services Comprehensive Assessment Program (ASCAP); see ASM 120, Adult Services Comprehensive Assessment.

ASM 115, pages 1-2

Moreover, Adult Services Manual 101 (12-1-2013) (hereinafter "ASM 101") and Adult Services Manual 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. For example, ASM 101 provides:

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.

Personal care services which are eligible for Title XIX funding are limited to:

Activities of Daily Living (ADL)

- Eating.
- Toileting.
- Bathing.
- Grooming.
- Dressing.
- Transferring.
- Mobility.

Instrumental Activities of Daily Living (IADL)

- Taking medication.
- Meal preparation/cleanup.
- Shopping for food and other necessities of daily living.
- Laundry.
- Housework.

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.

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 would include such items as walkers, wheelchairs, canes, reachers, lift chairs, bath benches, grab bars and handheld showers.

* * *

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.

ASM 101, pages 1-3, 5

Moreover, ASM 120 states:

Functional Assessment

The **Functional Assessment** module of the **ASCAP** comprehensive assessment is the basis for service planning and for the HHS 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 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. Ms. Smith would be eligible to receive assistance with IADL's [sic] 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.

ASM 120, pages 2-4 of 7

Here, the Department authorized [REDACTED] of HHS per month for Petitioner starting [REDACTED].

In support of the decision, the ASW testified that the amount of HHS authorized was based on the reports of Petitioner and her grandson/interpreter that Petitioner needs assistance washing her back when bathing because Petitioner cannot reach it; Petitioner needs help grooming her finger and toe nails; Petitioner needs assistance with dressing as she has difficulty raising her arms; Petitioner's provider has to put Petitioner's medications in a pill sorter because Petitioner gets confused; and that the provider completes Petitioner's housework, laundry, shopping and meal preparation because, while Petitioner is ambulatory, she tires easily. She also testified that, while Petitioner was ranked a "3" in toileting, that ranking was a mistake and no HHS were authorized for assistance with that task given the report from Petitioner and her grandson/interpreter that Petitioner does not wear diapers and can get up and use the bathroom at night when she is home alone.

With respect to the start date of Petitioner's services, the ASW testified that she chose [REDACTED] as the start date in order to allow for time for the notice to reach Petitioner in the mail prior to the start date. She also testified that the Department cannot approve any HHS prior to the assessment and that she did not ask if services if services were provided in November or [REDACTED].

In response, Petitioner's representative testified that Petitioner needs the maximum amount of HHS that can be authorized for assistance with the Instrumental Activities of Daily Living (IADLs) of housework, laundry, shopping and meal preparation as Petitioner is totally dependent on others for those tasks and cannot do any bending, lifting, reaching, pulling, or carrying. He also testified that, with respect to shopping, Petitioner cannot even select the items that need to be purchased because of her dementia. According to Petitioner's representative, Petitioner reported her need for assistance with all IADLs during the assessment, but that the ASW never asked any follow up questions regarding what exact assistance was needed and how much.

Petitioner's representative further testified that, while Petitioner has been approved for one hour per month of assistance with taking medications, she actually needs at least █ hours per month as she takes medications █ a day, but cannot organize them and the provider has to hand them and give them to her.

Regarding bathing, Petitioner's representative testified that Petitioner needs more assistance than just washing her back and that she also needs help getting in-and-out of the bathtub and washing other parts of her body. He also testified that, while Petitioner may report that she washes herself, she does not really do so and that she requires full assistance for her full baths and sponge baths, which she alternates between every-other-day.

Regarding grooming, Petitioner's representative testified that, in addition to nail care, Petitioner needs help "sprucing up" for when she goes out into the community and that she is requesting █ minutes per day, █ days per week, in order to maintain a neat appearance.

With respect to mobility, Petitioner's representative testified that Petitioner's bedroom is on the second floor of her two-story home and that she absolutely cannot go up or down the stairs without physical assistance. According to her representative, Petitioner uses the stairs several times a day and, once past the stairs, Petitioner is able to get around on her own with the use of a walker.

With respect to transferring, Petitioner's representative testified that Petitioner needs help getting out of bed in the morning.

Regarding toileting, Petitioner's representative testified that Petitioner wears disposable briefs at night, which she needs help with, and that, during the day, she needs assistance getting on-and-off the toilet. He also testified that, while Petitioner's grandson/interpreter did report during the assessment that Petitioner does not wear diapers and can get up and use the toilet when she is home alone at night, those reports are not true and Petitioner's representative cannot explain why Petitioner's grandson/interpreter made them.

Petitioner's representative further testified that he was present during the hearing, but did not interject while Petitioner and her grandson/interpreter were reporting Petitioner's needs or make corrections to any incorrect information that was given because the ASW gave him a "withering look" when he first attempted to do so and he took that to mean he should stay out of it.

Petitioner's representative also testified that the provider agency has been providing services since [REDACTED] and that payments can be made retroactively if the services were provided. He further noted that the ASW never asked during the assessment whether services were already being provided.

Petitioner bears the burden of proving by a preponderance of the evidence that the Department erred. Moreover, the undersigned Administrative Law Judge is limited to reviewing the Department's decision in light of the information available at the time the decision was made.

Given the available information, Petitioner has failed to meet her burden of proving that the Department erred with respect to the amount of HHS authorized. While Petitioner's representative testified extensively and thoroughly regarding the care he claims Petitioner needs and receives, he also acknowledged that no such information was conveyed to the ASW during the home assessment. Similarly, while Petitioner's representative testified that Petitioner and/or her grandson/interpreter gave incomplete or inaccurate information during the home assessment, he does not dispute what information was given. The Department can only authorize services based on what is reported and, given the reports of Petitioner and/or her grandson/interpreter in this case, which were made by those familiar with her care and were not contradicted at the time, the authorization of services was proper.

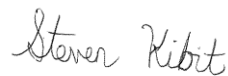
However, while amount of services may have been proper, Petitioner has met her burden of proof with respect to start date of the authorization. While the ASW testified that she chose [REDACTED] as the start date for services in order to allow time for the Services and Payment Approval Notice to reach Petitioner in the mail prior to the start date, her decision to delay the start date of services, despite that fact that all requirements for approval were met, is not supported by any policy. Similarly, there is no support for the ASW's testimony that she could not authorize an approval date prior to the date of the comprehensive assessment. As noted by Petitioner's representative and quoted above, ASM 115 describes payment for HHS beginning on either the date of the application or the date of the medical professional's signature on the 54A Medical Needs Form, whichever is later, and, assuming all other requirements are met, such a date could occur prior to the comprehensive assessment. The authorization date in this case was therefore arbitrary, unsupported by policy, and an error by the Department.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that, while the amount of HHS approved was proper, the Department erred in denying Petitioner's request for an earlier authorization date.

IT IS, THEREFORE, ORDERED that:

The Department's decision is **REVERSED** and it must initiate a reassessment of the start date of Petitioner's HHS authorization.



SK/db

Steven Kibit
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

[REDACTED]

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