RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[redacted]

Date Mailed: [redacted]
MAHS Docket No.: 16-002352
Agency No.: [redacted]
Petitioner: [redacted]

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

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, an in-person hearing was held on [redacted] at the [redacted] Department of Health and Human Services in [redacted]. All parties appeared in person except for the Department Appeals Review Officer, [redacted] representing the Department, who appeared by conference telephone. Petitioner was represented by [redacted], Attorney with [redacted]. [redacted] appeared as a witness on behalf of Petitioner.

Witnesses on behalf of the Department included [redacted], Adult Services Worker (ASW) who was assigned as a temporary ASW, [redacted], Adult Services Supervisor, (ASS), and [redacted], current ASW on Petitioner's case.

ISSUE

Did the Department properly reduce Petitioner's HHS grant at review?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. Appellant is a [redacted] year old female beneficiary of the welfare Medicaid and SSI programs. Petitioner has had an HHS case opened since at least [redacted]- over 10 years. (Exhibit A.15; Testimony).

2. In [redacted] Petitioner's HHS case was scheduled for a review. Petitioner's past ASW was no longer assigned to her case; instead a temporary ASW was assigned who informed Petitioner at the review that her case will be assigned to a different caseworker in the future. (Exhibit A.13).

3. On [redacted] Petitioner's temporary caseworker did an in home assessment for Petitioner's review. Notes and Testimony by the ASW indicate that Petitioner answered the door and let the ASW into her home, that Petitioner walked into another room to get her medications on her own, that Petitioner's cane was not visible but the ASW speculated that it may have been in Petitioner's closet, and that Petitioner was observed sitting down on own and did not need assistance. (Exhibit A.13; Testimony).

4. On [redacted] the ASW issued an Advance Negative Action Notice to Petitioner informing her that her HHS grant was being reduced to $473.68 (from $512.92) due to the removal of mobility and transferring. (Exhibit A.8; Testimony).

5. Petitioner's grant has never been reduced in the past. Petitioner's new caseworker completed a subsequent reassessment with a grant of $603.00. Petitioner's current ASW testified at the administrative hearing. (Testimony).

6. Petitioner's caregiver testified that it was she who answered the door when the ASW came for the review; and that Petitioner's cane was in the living room. (Testimony by Caregiver).

7. Petitioner did not go to another room to obtain medications but obtained a list of medications from the counter for the ASW's review. (Testimony; Exhibit A).

8. On [redacted] Petitioner filed a request for an administrative hearing. (Exhibit A.6).

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.

Adult Services Manual (ASM) 105, 11-1-11, 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.

Medical Need Certification

Medical needs are certified utilizing the DHS-54A, Medical Needs form and must be completed by a Medicaid enrolled medical professional. Completed DHS-54A or Veterans Administration medical forms are acceptable for individual 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:

- 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,
11-1-2011, Pages 2-3 of 3

Adult Services Manual (ASM) 120, 5-1-12, addresses the 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; 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.

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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 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 IADL's 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.

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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.

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) 101, 11-1-11, addresses 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).
- 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.

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.).
Nurse practitioner.

Occupational therapist
Physical therapist.

A physician assistant (PA) is not an enrolled Medicaid provider and **cannot** sign the DHS-54A.

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 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.

The local office adult services unit receives a DHS-54A signed on 1/18/2011 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 2/16/2011. Payment cannot begin until 2/16/2011, or later, if the provider was not working during this time.

Adult Services Manual (ASM) 101, 11-1-2011,
Pages 3-4 of 4.

The purview of an administrative law judge (ALJ) is to review the Department's action and to make a determination if those actions are in compliance with Department policy, and not contrary to law. The ALJ must base the hearing decision on the preponderance

of the evidence offered at the hearing or otherwise included in the record. The ALJ is required to take all of the evidence into account, weigh it, and make a determination under the preponderance of evidence - more likely than not - standard.

The Petitioner has the burden of proof at an administrative hearing by a preponderance of evidence. The Respondent has the burden of going forward.

After a careful review of the credible and substantial evidence of record, this ALJ finds that the Petitioner has met her burden of proof, and the Department has not sufficiently rebutted the substantial and credible evidence for the reasons set forth below.

Here, the Respondent argues that Petitioner walked on her own to the door and admitted the ASW into her home, that Petitioner's cane was not in sight and the ASW speculated that it may have been in the closet, that Petitioner freely walked and retrieved medications from another room. The credible and substantial Testimony of record indicates as to all 3 of these purported facts, contrary information. Specifically, Petitioner's caregiver was the individual who admitted the ASW into the home for the assessment. Petitioner's cane was in the living room, not the closet. Petitioner did not go to another room to obtain medications but obtained a list of medications from the counter for the ASW's review.

Moreover, Petitioner's HHS grant for 10 years was never reduced. Moreover, after the current assessment Petitioner's new ASW who testified at the administrative hearing granted Petitioner services even greater than Petitioner had prior to the current reduction. As noted, Petitioner has been a recipient of HHS for over 10 years. The new ASW was at the administrative hearing and gave credible testimony.

Taking all the evidence of record as a whole, this ALJ finds that the facts and evidence submitted by the Department were sufficiently rebutted by Petitioner and thus, the evidence does not credibly support the reduction herein. Petitioner has meet her burden of proof to establish eligibility for the HHS grant with the mobility and transferring included, and thus, under general evidentiary rules this ALJ must find in favor of Petitioner.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department incorrectly reduced Petitioner's HHS grant pursuant to its 1/20/16 Advanced Negative Action Notice.

IT IS, THEREFORE, ORDERED that:

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

JS/cg

Janice Spodarek
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30763
Lansing, Michigan 48909-8139

DHHS [redacted]

Agency Representative [redacted]

DHHS Department Rep. [redacted]

DHHS -Dept Contact [redacted]

Petitioner [redacted]

Counsel for Petitioner [redacted]