



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: June, 14, 2016
MAHS Docket No.: 16-005596
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 [REDACTED] did not appear at the hearing. Petitioner's mother/Authorized Hearings Representative [REDACTED] appeared on behalf of the Petitioner. [REDACTED], appeals Review Officer; [REDACTED], Adult Service Supervisor; and [REDACTED], Adult Services Worker represented the Department of Health and Human Services (Department or State or Respondent).

State's Exhibit a pages 1-54 were admitted as evidence.

ISSUE

Did the Department properly determine the correct 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 beneficiary, date of birth [REDACTED].
2. Petitioner is diagnosed with cognitive impaired autism, fetal alcohol syndrome, microcephaly, speech impairment, language impairment, moderate cognitive impairment and cerebral palsy.

3. Petitioner was receiving ranking of care of '3' for bathing, grooming, dressing, toileting, eating, medication, housework, laundry, shopping and meal preparation. (State's Exhibit A page 19)
4. Petitioner was approved for 71:01 hours or \$ [REDACTED] in HHS services. (State's Exhibit A page 28)
5. On [REDACTED], an in-home review was conducted with Petitioner and his brother. The provider was not present. Petitioner's brother indicated that Petitioner's needs remain the same. (State's Exhibit A page 20)
6. On [REDACTED], the Adult Services Worker sent Petitioner an Advance Negative Action letter, stating that services would be suspended effective [REDACTED], as the provider was not present for the review. Further, that per policy in order to determine continued eligibility a contact needs to be completed with his provider.
7. The Department Adult Services Worker completed the assessment and a reduction was made on Petitioner's HHS services.
8. On [REDACTED], the Department sent Petitioner a Negative Action notice informing Petitioner that Home Help payments have been adjusted and will be reduced to \$ [REDACTED] per month effective [REDACTED]. Per policy DHHS does not pay for monitoring and supervising. (State's Exhibit A page 13)
9. On [REDACTED], the Michigan Administrative Hearing System received a Request for Hearing to contest the reduction of approved HHS.

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 adjoining 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**

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.

The Department Representative testified that Petitioner uses no adaptive equipment for ambulation. He needs daily coaching to complete tasks. The Medical doctor did not certify which Activities of Daily Living Petitioner needs assistance with. The Department caseworker reduced assistance with eating from 44 minutes to 14 minutes, because Petitioner can feed himself but needs monitoring. His provider cuts his food for him. Laundry was reduced from 14 minutes to 10 minutes because HHS will only pay for putting clothing into the machine, not the time it takes for the machine to wash them. Housework was increased and shopping was increased.

Petitioner's representative testified that

- Eating should be scored a ranking of '4' instead of '3'. The Provider/Representative has to get Petitioner to wash his hands and clean his hands and face after eating. She has to sit with Petitioner and coach him while he eats. She cuts up his food and picks it up off the table Petitioner spills food. Because of his cerebral palsy, his hands are bent and do not hold the fork properly. 44 minutes was an appropriate amount of time for this task because she performs it three times per day seven days per week plus prepares a snack.

Further, Petitioner's representative argues that:

- Laundry should be increased to 20 minutes because Petitioner soils himself each time he poops. He has special briefs and The Representative has to change Petitioner. He also drools. She washes two loads of clothing every other day for Petitioner. She spends 55 minutes per week helping him with laundry. Petitioner should receive a ranking of '5'.
- Toileting should be increased in the amount of 24 minutes per day. The representative/provider has to clean Petitioner because he is not able to clean himself properly when he goes to the bathroom. She assists him with 20 minutes of bathing, 10 minutes of grooming because she has to shave Petitioner, cut his hair and toenails/fingernails. He should receive a ranking of '5', rather than a ranking of '3' because Petitioner cannot assist with the tasks.
- Medication needs to be increased to 10 minutes because the Representative puts ointment on his feet, drops in Petitioner's ears and gives him his medication every day, which she has to coach him and prompt Petitioner to take. Medication should be scored a '5' instead of a '3' because Petitioner doesn't have the cognitive ability to take medications on his own.
- Dressing should be ranked a '4' because she helps him in the morning to dress and helps him undress at night as Petitioner cannot perform these tasks without assistance.

Lastly, Petitioner's representative argues that Petitioner should be scored a '5' for meal preparation and shopping because he cannot perform the tasks based upon his physical and mental condition.

This Administrative Law Judge finds that the medical evidence and the ASW's testimony, establishes that Petitioner has a certified medical need for HHS. Petitioner has provided a Medical Needs form which lists the diagnoses and certifies that Petitioner has a medical need for assistance with activities of personal care ADLs, though they are not specified by the document.

In the instant case, Petitioner makes three meals per day seven days per week. If Petitioner were given 1 minute per meal to cut up food this would equal 21 minutes per week (7 days x 3 meals per day). The Department caseworker gave Petitioner 14 minutes, which makes no logical sense if Petitioner needs assistance at every meal.

Petitioner's Representative established with credible testimony that the reduction of services was not proper under the circumstances. Based on the evidence presented,

Petitioner has established, by a preponderance of the evidence, that he requires more HHS than he was approved for, at least for toileting and eating. Petitioner has lifelong impairments, both physical and mental. His condition is not going to improve. Petitioner is totally dependent upon another for housekeeping, laundry, shopping, meal preparation, taking medication which merits a '5' ranking. He requires direct hands on assistance with most aspects of dressing, grooming, bathing, toileting and eating which merits a '4' ranking. The Department has not established that the reduction/changes in Time and Tasks are justified. The Department has not established that it has chosen the appropriate ranking for each task.

Based on the evidence as presented, Petitioner has established, by a preponderance of the evidence, that he requires more HHS hands on assistance than he was approved for. The Department's decision to reduce Petitioner's HHS Time and Task cannot be upheld under the circumstances.

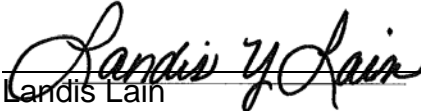
DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department did not properly reduce Petitioner's Time and Task for Home Help Services determination.

IT IS THEREFORE ORDERED THAT:

The Department's decision is **REVERSED**. The Department is **ORDERED** to reinstate Petitioner's prior Time and Task to the date of reduction and initiate pay to Petitioner any additional HHS amount (if any) to which he is entitled from that date forward. The Department is also **ORDERED** to initiate reassessment of Petitioner's correct for ranking of Time and Tasks in accordance with this decision and raise Petitioner's rankings to meet the appropriate levels.

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 Department Rep.

[REDACTED]

DHHS -Dept Contact

[REDACTED]

Petitioner

[REDACTED]

DHHS-Location Contact

[REDACTED]