



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: July 15, 2016
MAHS Docket No.: 16-005971
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 June 16, 2016. [REDACTED], the Petitioner, appeared on her own behalf. [REDACTED], [REDACTED] (Provider Agency), and [REDACTED], caregiver (Provider), appeared as witnesses for the Petitioner. [REDACTED], Appeals Review Officer, represented the Department of Health and Human Services (Department). [REDACTED], Adult Services Worker (ASW), appeared as a witness for the Department.

During the hearing proceedings, the Department's Hearing Summary Packet was admitted as Exhibit A, pp. 1-35. The additional medical documentation Petitioner brought to the hearing was not admitted because it was dated [REDACTED]. Therefore, this was not information available at the time of the [REDACTED], case action, prior to the [REDACTED], effective date of the proposed HHS reduction, or even prior to the filing of Petitioner's [REDACTED], hearing request.

ISSUE

Did the Department properly reduce Petitioner's Home Help Services (HHS) authorization?

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 had been authorized for HHS since [REDACTED]. (Exhibit A, p. 11)

2. The Department had received verification that Petitioner has been diagnosed with hypertension, asthma, hepatitis C, anxiety, and chronic myalgia. (Exhibit A, p. 12)
3. On [REDACTED], the ASW completed a home visit for the redetermination review. The ASW credibly testified that the ADLs and IADLs were discussed during the home visit assessment. In part, the ASW observed Petitioner walking, transferring, and going up/down the stairs without assistance. The ASW's understanding of what Petitioner reported regarding medication assistance was that the provider puts Petitioner's medication in a Sun-Sat container and Petitioner is able to take the medications out of the container. Accordingly, the ASW determined medication assistance would be reduced to 1 day for preparing and mobility assistance would be removed from the time and task authorization. (Exhibit A, p. 14; ASW Testimony)
4. The ASW updated the functional rankings to level 1 for mobility and level 3 for medication and adjusted the time and task authorization. (Exhibit A, p. 13 and 15; ASW Testimony)
5. On [REDACTED], an Advance Negative Action Notice was issued to Petitioner stating the HHS authorization would be reduced to [REDACTED] effective [REDACTED], because mobility was removed from the time and task and medication was reduced to one day. (Exhibit A, pp. 7-9)
6. On [REDACTED], Petitioner's doctor completed a DHS-54A Medical Needs form certifying that Petitioner had a medical need for assistance with listed personal care activities. The circled activities were: meal preparation, shopping, laundry, and housework (Exhibit A, p. 17)
7. Petitioner's Request for Hearing was received by the Michigan Administrative Hearing System on [REDACTED] (Exhibit A, p. 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 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.

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) 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.

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

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.

For the HHS program, mobility means “walking or moving around inside the living area, changing locations in a room, assistance with stairs or maneuvering around pets, or obstacles including uneven floors.” Adult Services Manual 121, May 1, 2013, p. 4 of 6.

Petitioner is a Medicaid beneficiary who had been authorized for HHS since [REDACTED]. (Exhibit A, p. 11) The Department had received verification that Petitioner has been diagnosed with hypertension, asthma, hepatitis C, anxiety, and chronic myalgia. (Exhibit A, p. 12)

On [REDACTED], the ASW completed a home visit for the redetermination review. The ASW credibly testified that the ADLs and IADLs were discussed during the home visit assessment. The ASW noted this was her first time with Petitioner. In part, the ASW observed Petitioner walking, transferring, and going up/down the stairs without assistance. The ASW’s understanding of what Petitioner reported regarding medication assistance was that the provider puts Petitioner’s medication in a Sun-Sat container and Petitioner is able to take the medications out of the container. Accordingly, the ASW determined medication assistance would be reduced to 1 day for preparing and mobility assistance would be removed from the time and task authorization. (Exhibit A, p. 14; ASW Testimony) The ASW updated the functional rankings to level 1 for mobility and level 3 for medication and adjusted the time and task authorization. (Exhibit A, p. 13 and 15; ASW Testimony) On [REDACTED], an Advance Negative Action Notice was issued to Petitioner stating the HHS authorization would be reduced to [REDACTED] effective [REDACTED] because mobility was removed from the time and task and medication was reduced to one day. (Exhibit A, pp. 7-9)

On [REDACTED] Petitioner’s doctor completed a DHS-54A Medical Needs form certifying that Petitioner had a medical need for assistance with listed personal care activities. The circled activities were: meal preparation, shopping, laundry, and housework (Exhibit A, p. 17)

Petitioner's disagrees with the reduction. Petitioner testified that she has severe carpal tunnel syndrome, for which she wears braces on both hands. Petitioner explained the assistance she receives with medications. Petitioner has to take medications twice per day. Petitioner's HHS provider gives Petitioner the morning medications each day and puts the second set in the container before she leaves. Then, someone else gets the second set out of the container for Petitioner when it is time to take them. The pill containers are stackable and have lids that screw off. Petitioner testified she cannot take the medication out of these containers herself. (Petitioner Testimony)

Regarding mobility, Petitioner noted that she never said she cannot walk at all. When the ASW arrived, Petitioner's HHS provider was not there yet. Therefore, Petitioner had to walk to open the door and go up/down stairs to get a form the ASW requested because there was no one else there. Petitioner also testified that she has a couple of other doctors she sees, including pain management. When Petitioner has treatments at the pain management clinic someone has to be with her or they will not do the treatments. Petitioner cannot not drive, so she has to be driven to the clinic. Petitioner also asserted that she has fallen multiple times in her home. Petitioner stated she has spinal stenosis, which affects arms and legs. Therefore, Petitioner's legs are weak. (Petitioner Testimony)

Petitioner feels that the ASW was very unprofessional, which caused Petitioner's anxiety to be way up when the ASW left. For example, the ASW did not say good morning back to Petitioner and it seemed like the ASW felt Petitioner was lying. Petitioner's HHS provider testified that she witnessed Petitioner's anxiety go up after she was told the HHS hours would be reduced. (Petitioner and Provider Agency Testimony)

Petitioner's HHS provider testified that she does everything she is supposed to do. Petitioner's HHS provider stated that Petitioner is really ill and noted that how the ASW treated Petitioner was very unprofessional. Petitioner's HHS provider asserted that it was not right to decrease Petitioner's HHS hours and that Petitioner needs her there for those hours. (Provider Testimony)

Toward the end of the hearing, Petitioner also testified that she needs some assistance with: dressing, such as tying shoes or buttoning clothes; bathing, such as getting in/out of the tub; and some days with mobility, such as going up and down the stairs. Petitioner noted that every day is a little different. Petitioner also acknowledged that the doctor that completed the [REDACTED], DHS-54A Medical Needs form has been her primary doctor for about 8 years. (Petitioner Testimony)

Overall, the determination to reduce Petitioner's HHS authorization was supported by the information that was available around the time of this assessment. Petitioner's testimony regarding her needs for assistance is found only partially credible because it was not consistent with the other evidence of record. For example, Petitioner indicated her needs for the additional HHS hours for medication assistance related to severe carpal tunnel syndrome. (Petitioner Testimony) However, there is no documentation of

a current, diagnosis of carpal tunnel syndrome. On the May 9, 2016, DHS-54A Medical Needs form, Petitioner's doctor only listed diagnoses of hypertension, asthma, hepatitis C, anxiety, and chronic myalgia. Further, while the certification from the doctor does not prescribe or authorize HHS services, it is noted that Petitioner's doctor did not indicate a medical need for assistance with taking medications or mobility. (Exhibit A, p. 17) The ASW provided detailed testimony regarding her observations of Petitioner during the home visit and her understanding of what was reported regarding Petitioner's needs for assistance. The ASW's testimony is found credible and was consistent with documented notes from the home visit and for the functional rankings. (ASW Testimony; Exhibit A, pp. 13-14) Additionally, some of the assistance Petitioner described regarding mobility does not fall within the definition of mobility for the HHS program. Specifically, driving Petitioner to/from and staying with her for treatments at the pain clinic would be considered medical transportation. (Petitioner Testimony) The above cited ASM 101 policy is clear that HHS cannot be authorized for medical transportation. Accordingly, the [REDACTED], determination to reduce Petitioner's HHS authorization is upheld based on the information that was available around the time of this assessment.

If Petitioner has not already done so, she may wish to provide the Department with any more recent medical documentation along with any updated information about her functional abilities and needs for assistance for consideration for her ongoing HHS case.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the [REDACTED], determination to reduce Petitioner's HHS authorization is upheld based on information that was available around the time of this assessment.

IT IS, THEREFORE, ORDERED that:

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



Colleen Lack
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

CL/cg

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

Petitioner

[REDACTED]

DHHS Department Rep.

[REDACTED]

DHHS -Dept Contact

[REDACTED]

DHHS-Location Contact

[REDACTED]