



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 12, 2016
MAHS Docket No.: 16-005986
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], friend, appeared as a witness 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. 1-40 and Petitioner's medical documentation was admitted as Exhibit 1, pp. 1-31.

ISSUE

Did the Department properly deny Petitioner's Home Help Services (HHS) referral?

FINDINGS OF FACT

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

1. On [REDACTED], the Department received a referral for Petitioner for HHS. (Exhibit A, p.15)

2. On [REDACTED], the Department received a DHS-54A Medical Needs form completed by Petitioner's doctor. Listed diagnoses were chronic obstructive pulmonary disease (COPD), osteoarthritis, lumbar disc degeneration, and hypertension. The doctor certified that Petitioner had a medical need for assistance with listed personal care activities. Only one activity was circled, housework. (Exhibit A, p. 20)
3. On [REDACTED], the ASW went to Petitioner's home and completed an initial assessment with Petitioner. During the assessment, the Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADLs) were discussed. The ASW observed Petitioner walking and transferring independently and without any adaptive equipment. Petitioner only reported needs for assistance with some aspects of housework, laundry, shopping, and meal preparation. (Exhibit A, pp. 18-19; ASW Testimony)
4. The ASW determined that Petitioner was at functional ranking level 1 for all ADLs as well as the IADL of medication, and functional ranking level 3 for the IADLs of housework, laundry, shopping, and meal preparation. (Exhibit A, p. 17)
5. On [REDACTED], the Department sent Petitioner an Adequate Negative Action Notice informing her that HHS was denied because the initial assessment did not identify a need for an ADL, therefore, she is not eligible for HHS. (Exhibit A, pp. 12-13)
6. Petitioner's Request for Hearing was received by the Michigan Administrative Hearing System on [REDACTED]. (Exhibit A, pp. 6-13)

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
(Underline added by ALJ)

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
(Underline added by ALJ)

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
- 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,
December 1, 2013, pp. 1-6 of 7
(Underline added by ALJ)

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.
(Underline added by ALJ)

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.

On [REDACTED], the Department received a referral for Petitioner for HHS. (Exhibit A, p.15)

On [REDACTED] the Department received a DHS-54A Medical Needs form completed by Petitioner’s doctor. Listed diagnoses were COPD, osteoarthritis, lumbar disc degeneration, and hypertension. The doctor certified that Petitioner had a medical need for assistance with listed personal care activities. Only one activity was circled, housework. (Exhibit A, p. 20)

On [REDACTED], the ASW went to Petitioner’s home and completed an initial assessment with Petitioner. During the assessment, the ADLs and IADLs were discussed. The ASW observed Petitioner walking and transferring independently and without any adaptive equipment. Petitioner only reported needs for assistance with some aspects of housework, laundry, shopping, and meal preparation. (Exhibit A, pp. 18-19; ASW Testimony) The ASW determined that Petitioner was at functional ranking level 1 for all ADLs as well as the IADL of medication, and functional ranking level 3 for the IADLs of housework, laundry, shopping, and meal preparation. (Exhibit A, p. 17)

On [REDACTED], the Department sent Petitioner an Adequate Negative Action Notice informing her that HHS was denied because the initial assessment did not identify a need for an ADL, therefore, she is not eligible for HHS. (Exhibit A, pp. 12-13)

Petitioner disagrees with the denial and testified that she was shocked when she was denied. Petitioner is in severe pain, has rods in her back, and has COPD. Petitioner stated she does need assistance with getting in/out of the shower and indicated there may have been a misunderstanding with the ASW. Petitioner’s laundry is in the

basement and she cannot walk the stairs. Therefore, Petitioner's friend does the laundry for her. While Petitioner can use the microwave or make a sandwich, Petitioner's friend does the cooking because of Petitioner's back pain. Petitioner also described the extensive assistance her friend provides with grocery shopping. (Petitioner Testimony)

Petitioner noted that her doctor did not call her to ask what she needed assistance with, the doctor just circled housekeeping. However, Petitioner also acknowledged that this doctor has been her doctor for 20 some years. Petitioner would think that the doctor knows her needs, but may not have known that her laundry is in the basement. (Petitioner Testimony)

Petitioner's testimony also indicated there have been changes in her condition since the initial assessment. Petitioner now has a torn tendon, has a boot on her leg, and uses a cane. Petitioner cannot drive and she may need surgery on her right leg. They are thinking about putting Petitioner on oxygen as her COPD has worsened. Petitioner stated she needs help going to doctor appointments. Petitioner cannot walk by herself, even with the cane, and does receive help walking within her home. (Petitioner Testimony; See also Exhibit 1, pp. 11, and 15-31)

Petitioner's testimony toward the end of the hearing indicated she had a cane at the time of the [REDACTED]. Home visit. Petitioner explained that she had left it in the car after going grocery shopping that morning. However, Petitioner also testified that at the time, she walked without using the cane for small distances in her house. However, Petitioner explained that just because she was not using the cane does not mean that she was not in pain. (Petitioner Testimony)

Petitioner's friend testified he has been helping Petitioner in her home and it saddens him that the policy's set forth are as they are. Petitioner's friend stated he has met people receiving this kind of help who do not deserve it, such as persons who can run a marathon. Petitioner's friend asserted that the whole objective is to deny and continue to deny, which saddens him. Petitioner's friend stated that Petitioner does really need the care she has applied for. (Friend Testimony)

Based on the information available to the Department at the time of the [REDACTED], case action, the determination to deny HHS for Petitioner was in accordance with Department policy. There was insufficient evidence to establish that Petitioner had a medical need for at least some direct physical assistance and/or assistive technology (functional ranking 3 or greater) regarding at least one ADL at the time of the initial assessment. At that time, Petitioner's doctor only indicated a need for assistance with the IADL of housework. From the home visit, the ASW understood that Petitioner only reported needs for assistance with housework, laundry, shopping, and meal preparation. These few reported needs were consistent with the ASW's observations of Petitioner and resulting assessment determination. For example, during the initial assessment, no use of adaptive equipment was reported and the ASW observed Petitioner walking and transferring independently and without any adaptive equipment. (Exhibit A, pp. 17-19; ASW Testimony) While it is not disputed that Petitioner had needs for hands on

assistance with IADLs (housework, laundry, shopping, and meal preparation) at the time of the initial assessment, Department policy does not allow for a HHS to be authorized when these are an individual's only needs for assistance. Petitioner's testimony indicated her condition and needs for assistance have significantly changed, however, these changes are more recent. Therefore, the information regarding these changes would not have been available to the Department at the time of the initial assessment. Accordingly, the determination to deny Petitioner's HHS referral is upheld based on the information available to the Department for the initial assessment.

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


DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly denied Petitioner's March 1, 2016 Home Help Services (HHS) referral based on the information available at that time.

IT IS, THEREFORE, ORDERED that:

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

CL/cg



Colleen Lack
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]

DHHS-Location Contact

[REDACTED]

DHHS Department Rep.

[REDACTED]

DHHS -Dept Contact

[REDACTED]

Petitioner

[REDACTED]