



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR



Date Mailed: July 25, 2016
MAHS Docket No.: 16-007007
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 July 13, 2016. Petitioner [REDACTED] and her provider [REDACTED] appeared on behalf of the Petitioner. [REDACTED], Appeals Review Officer; [REDACTED], Adult Services Supervisor and [REDACTED], Adult Services Specialist appeared to testify and represent the Department of Health and Human Services (Department or State).

State's Exhibit A pages 1-40 and Petitioner's Exhibit 1 were admitted as evidence.

ISSUE

Did the Department properly reduce Petitioner's 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 was receiving HHS in the amount of 43:31 hours per month or \$ [REDACTED] for grooming, dressing, toileting, transferring, medication, housework, laundry, shopping, and meal preparation. (State's Exhibit A, page 11)
3. On May 9, 2016, a redetermination review was conducted with Petitioner and the Agency Representative.

4. Petitioner reported no changes in her medical status, no change to medications and no hospitalizations since the last reporting period.
5. The caseworker determined that adjustments would be made to toileting and medications. The client appeared to be able to toilet and take her medication on her own. (State's Exhibit A, page 15)
6. Petitioner is diagnosed with asthma, diabetes hypertension, hyperlipidemia, carpal tunnel, back pain, herniated disc, arthritis of the right knee and tendonitis. (State's Exhibit A, page 11)
7. The caseworker determined that Petitioner needs assistance with bathing, grooming, dressing, toileting, medication, housework, laundry, shopping, and meal preparation. (State's Exhibit A, page 12)
8. The caseworker worker determined that Petitioner no longer needed assistance with toileting or medication. (State's Exhibit A, page 7)
9. On May 10, 2016, the worker sent Petitioner a DHS-1210 Services and Payroll Approval Notice indicating that HHS would decrease to \$ [REDACTED] effective May 1, 2016, due to changes that has occurred with provider services. Time and Task for toileting and administering medication will no longer be approved because of the recent assessment of the client's needs. Client appeared to be able to toilet and administer medications without needing assistance. (State's Exhibit A, pages 7-8)
10. On June 1, 2016, the Michigan Administrative Hearing System received a Request for Hearing contesting the reduction of services (Mobility and Medication).

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.

The Department alleges that the request for hearing on this issue is untimely, because the Notice of reduction of benefits was sent December 7, 2015 and the request for hearing was April 6, 2016

The AHR or, if none, the customer has 90 calendar days from the date of the written notice of case action to request a hearing. BAM, Item 600, p. 5.

A claimant shall be provided 90 days from the mailing of the notice in R 400.902 to request a hearing. R 400.904(4).

The claimant shall be provided reasonable time, not to exceed 90 days, in which to appeal an agency action. 45 CFR 205.10.

The agency must allow the applicant or recipient a reasonable time, not to exceed 90 days from the date that notice of action is mailed, to request a hearing. 42 CFR 431.221.

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**

Responsible Relatives

A responsible relative is defined as an individual's spouse or a parent of an unmarried child under age 18.

Activities of daily living (ADL) may be approved when the responsible relative is **unavailable** or **unable** to provide these services.

Note: Unavailable means absence from the home for an extended period due to employment, school or **other legitimate reasons**. The responsible relative must provide a work or school schedule to verify they are unavailable to provide care. **Unable** means the responsible person has disabilities of their own which prevent them from providing care. These disabilities must be documented and verified by a medical professional on the DHS-54A, Medical Needs form.

Do **not** approve shopping, laundry, or light housecleaning, **when a responsible relative of the client resides in the home, unless** they are unavailable or unable to provide these services. Document findings in the general narrative in ASCAP.

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.

In the instant case, Petitioner contacted her caseworker on more than one occasion to contest the amount of HHS provided to her. This is clearly a request to be re-evaluated as Petitioner felt that the evaluation was not proper. In fact, the caseworker testified that she actually increased the HHS after she talked to her supervisor and her supervisor advised her that laundry included folding also.

Department policy dictates;

The service plan directs the movement and progress toward goals identified jointly by the client and specialist. **Service plans are to be completed on all new cases, updated as often as necessary, but minimally at the six month review and annual reassessment. ASM 130, pages 1-2.**

Service plan development practices will include the use of the following skills:

- **Listen actively** to the client.

- Encourage clients to **explore options** and select the appropriate services and supports.
- Monitor for **congruency** between case assessment and service plan.
- Provide the necessary supports to **assist clients in applying for resources**.
- Continually **reassess** case planning.
- Enhance/preserve the client's **quality of life**.

Monitor and document the status of all **referrals** to waiver programs and other community resources **to ensure quality outcomes**. ASM 130, page 2

The Department Caseworker testified that she interviewed Petitioner and the Petitioner told her that there had been no change in her condition. The Caseworker assessed the situation and could see that some services were not needed. The caseworker did not go through each and every Time and Task with the client.

Petitioner testified that the caseworker never asked her to get up or move around. She did not ask her about toileting or medication specifically. Petitioner stated that she needs help with transferring, especially in the morning. She gets help with medications because she takes quite a bit. Petitioner has a problem with her hands, so the HHS aide puts the medication in a tray for her. She needs help to get to the commode chair and when the aide is not there her neighbors or her sons check on her to help her. Her crutch is behind the door and her cane hangs on her chair.

Petitioner submitted a new DHA 54A Medical Needs form which indicates that Petitioner has a certified medical need for assistance with bathing, grooming, dressing, transferring, mobility, taking medication, meal preparation, shopping, laundry, housework. Her diagnosis is asthma. The Medical Needs form is dated July 12, 2016, which would not have been available to the caseworker at the time of the assessment and cannot be considered as relevant for this determination which took place in May 2016.

In this case the caseworker determined in the assessment that Petitioner should be ranked '2' for eating. However, the caseworker notes indicate that Petitioner's food must be cut up due to pain, limited movement, stiffness, lack of grip, weak (kness) and bending standing. If Petitioner requires some assistance in this area she should be scored at least a '3'.

Petitioner is ranked a '3' for toileting because she uses a commode which has to be cleaned, due to pain, limited movement, stiffness, lack of grip, weak (kness), and no

bending/standing. The caseworker did not indicate how she made the determination that Petitioner no longer needed assistance with toileting.

Petitioner is ranked a '3' for medication and the notes indicate –needs assistance with preparation due to the amount of daily medication. The worker did not indicate justification (or how she made the determination) for this reduction anywhere in her notes or testimony.

Petitioner is ranked a '2' for transferring. Yet, Petitioner stated that she uses both a crutch and a cane. Case notes indicate that she is able to transfer with the use of a cane and this is a non-paid task. However, the ranking should be '3'.

Mobility is 'ranked '2'. The case notes indicate that Petitioner sometimes needs help at night due to pain, limited movement, stiffness, lack of grip, weak (knees), and no bending/standing. Mobility should be ranked a '3' if Petitioner needs assistance.

This Administrative Law judge is uncertain exactly how the caseworker made her assessment if she did not go over the Time and Task information with client as this is part of the comprehensive assessment. Testimony and case notes appear inconsistent.

Department policy requires that Department workers continually reassess case planning to provide the necessary supports to clients to enhance and preserve the client's quality of life. The worker did not provide sufficient evidence that her comprehensive assessment required a reduction in Petitioner's HHS benefits. The Adult Services Specialist failed to establish that she acted in accordance with Department policy under the circumstances.

The Department has not established by the necessary competent, substantial and material evidence on the record that it was acting in compliance with Department policy when it reduced Petitioner's HHS based upon the information contained in the record. The Department's determination cannot be upheld under the circumstances.

DECISION AND ORDER

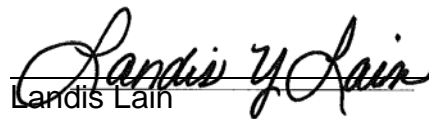
The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly denied the Petitioner's HHS application based on the available information.

IT IS, THEREFORE, ORDERED that:

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

The Department is **ORDERED** to re-assess Petitioner for Home Help Services in accordance with Department policy.

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]

Petitioner

[REDACTED]

DHHS Department Rep.

[REDACTED]

DHHS -Dept Contact

[REDACTED]

Authorized Hearing Rep.

[REDACTED]

DHHS-Location Contact

[REDACTED]