



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 27, 2016
MAHS Docket No.: 16-007453
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 26, 2016. Petitioner did not testify. Petitioner's Guardian [REDACTED] and Community Living Supports Respite Worker, [REDACTED] appeared to testify on behalf of the Petitioner. [REDACTED], Appeals Review Officer and [REDACTED] Adult Services Specialist appeared to testify and represent the Department of Health and Human Services (Department).

The caseworker who actually worked on the case was not available at the hearing to testify. Petitioner's Exhibits 1-4 and State's Exhibit A pages 1-44 were admitted as evidence.

ISSUE

Did the Department properly determine the amount of approved 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: autism, seizure disorder, developmental disability, spastic diplegic cerebral palsy, cognitive impairment, idiopathic epilepsy.
3. On January 13, 2016, Petitioner's Medical doctor indicated on the DHS 54A Medical Needs form that Petitioner has a certified medical need for assistance

with bathing, taking medication, meal preparation, shopping, laundry, and housework. (State's Exhibit A, page 21)

4. On March 10, 2016, an initial assessment was held with Petitioner and her father/Guardian/provider.
5. Petitioner lives in the home with her parents.
6. On April 21, 2016, the Adult Services Worker sent Petitioner a Services Approval Notice informing Petitioner that she was to receive 25:27 hours per month or \$ [REDACTED] in Home Help Services.
7. On June 13, 2016, Petitioner's Guardian filed a request for a hearing to contest the Proposed Time and Task Assignments, stating that the approved Time and Task Assignment was insufficient for Petitioner's needs.

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) 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, page 5, Home Help Services must not be approved for the following:

- Supervising, monitoring, reminding, guiding, teaching or encouraging.
- Transportation.
- Adult or child day care.
- Services provided by another resource at the same time (for example, hospitalization, MI-Choice Waiver)

Petitioner's guardian testified that he helps Petitioner with bathing about 15-25 minutes every other day. He assists with grooming, by coming her hair, shaving her armpits, helping brush her teeth about 30 minutes per day. Petitioner's Guardian assists her with dressing every day for about 15 minutes. Petitioner received coaching for toileting unless it is during her period. When Petitioner has her period she needs intervention, five days per month, five minutes/four times per day. She is independent in transferring, continence and respiration. She is independent in mobility. Petitioner is given medication two times per day. Petitioner's guardian performs all of the meal preparation. Petitioner must eat separate meals, which preparation takes 30 minutes 3 times per day. Parents do the laundry 4 hours per week. Petitioner's clothing is washed separately because she uses hypoallergenic soap. Petitioner's Guardian makes special trips to Whole Foods for Petitioner's dietary restrictions 2 times per week at 45 minutes each visit. Petitioner receives six hours per week in Community Living Supports and six hours per week in Respite services from Community Mental Health. Petitioner is not independent in most activities. She requires coaching to get her to puts folded clothing in a basket. She does not fold clothing. She plays with the vacuum but does not complete tasks.

Caseworker notes indicate that Petitioner is enrolled in special education through Waterford School district and attends school. She participates in weekly speech therapy. The caseworker notes that Petitioner needs hand on assistance with bathing and grooming. She needs soaping and washing thoroughly as well as washing hair every other day. For grooming, client needs help with clipping

No one from the Department was present who could testify from personal knowledge, as the caseworker who actually worked on the case was not present for the hearing. 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 ILS Worker did not establish by a preponderance of the evidence that she did take appropriate action to address Petitioner's request for HHS. 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 determined the amount of Petitioner's HHS based upon the information contained in the record. The Department's determination cannot be upheld under the circumstances.

DECISION AND ORDER

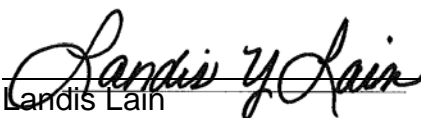
The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department failed to establish that the caseworker acted in accordance with Department policy under the circumstances.

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]
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DHHS-Location Contact

[REDACTED]

Authorized Hearing Rep.

[REDACTED]

DHHS Department Rep.

[REDACTED]

DHHS -Dept Contact

[REDACTED]