



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: October 11, 2016
MAHS Docket No.: 16-009281
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Steven Kibit

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.*, and upon the Petitioner's request for a hearing.

After due notice, an in-person hearing was held on October 5, 2016. Petitioner appeared and testified on her own behalf. [REDACTED], Petitioner's home help provider, was also present for Petitioner, but did not otherwise participate. [REDACTED], Appeals Review Officer, represented the Respondent Department of Health and Human Services. [REDACTED], Adult Services Worker (ASW), testified as a witness for the Department. [REDACTED], Adult Services Supervisor, was also present for the Department, but did not otherwise participate.

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 who had been approved for 54 hours and 46 minutes of HHS per month through the Department, with a total monthly care cost of [REDACTED]. (Exhibit A, page 9).
2. Specifically, Petitioner was approved for assistance with toileting, bathing, mobility, housework, laundry, shopping, meal preparation, and dressing. (Exhibit A, pages 9-10).

3. On [REDACTED], the ASW completed a home visit and reassessment with Petitioner and Petitioner's provider. (Exhibit A, page 7).
4. The ASW who completed the reassessment was not assigned to Petitioner's case, but was covering for another worker who was not available at that time. (Testimony of ASW).
5. During the assessment, Petitioner reported that she was able to walk around her home with the use of a walker. (Exhibit A, page 7; Testimony of Petitioner; Testimony of ASW).
6. She also reported that she only needed assistance with bathing four days a week. (Exhibit A, page 7; Testimony of ASW).
7. She further reported that the only assistance she needed with toileting was help getting on-and-off the toilet, and that she only needed such assistance three days a week. (Exhibit A, page 7; Testimony of ASW).
8. Based on those reports, the ASW subsequently determined that the 14 minutes per day, 5 days per week (5:01 per month) of assistance previously authorized for help with mobility should be removed as Petitioner's needs were met by her walker and she did not receive any assistance from her home help provider for that task. (Exhibit A, page 7; Testimony of ASW).
9. The ASW also determined that the days per week authorized for assistance with toileting and bathing should be reduced based on Petitioner's reports. (Exhibit A, page 7; Testimony of ASW).
10. The ASW further determined that the minutes per day authorized for assistance with toileting should also be reduced based on Petitioner's report that she only needed assistance in getting on-and-off the toilet. (Exhibit A, page 7; Testimony of ASW).
11. Specifically, assistance with toileting was reduced from 22 minutes per day, 7 days a week (11:02 per month) to 2 minutes per day, 3 days a week (0:52 per month), while assistance with bathing was reduced from 16 minutes per day, 7 days per week (8:02 per month) to 16 minutes per day, 4 days a week (4:35 per month). (Exhibit A, pages 9, 11).
12. On May 19, 2016, the Department sent Petitioner written notice that her HHS would be reduced on June 3, 2016. (Exhibit A, page 5).
13. The notice also provided that assistance with mobility was being removed, and assistance with toileting and bathing was being reduced. (Exhibit A, page 2).

14. On July 15, 2016, the Michigan Administrative Hearing System (MAHS) received the request for hearing filed by Petitioner regarding the reduction of her HHS. (Exhibit A, page 4).

CONCLUSIONS OF LAW

The Medical Assistance Program 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 statutes, the Social Welfare Act, 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 physician and may be provided by individuals or by private or public agencies.

Adult Services Manual 101 (12-1-2013) (hereinafter "ASM 101") and Adult Services Manual 120 (12-1-2013) (hereinafter "ASM 120") addressed the issues of what services are included in HHS and how such services are assessed. For example, ASM 101 provides in part:

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.

Personal care services which are eligible for Title XIX funding are limited to:

Activities of Daily Living (ADL)

- Eating.
- Toileting.
- Bathing.
- Grooming.
- Dressing.
- Transferring.
- Mobility.

Instrumental Activities of Daily Living (IADL)

- Taking medication.
- Meal preparation/cleanup.
- Shopping for food and other necessities of daily living.
- Laundry.
- Housework.

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 [sic] 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 would include such items as walkers, wheelchairs, canes, reachers, lift chairs, bath benches, grab bars and handheld showers.

ASM 101, pages 1-3

Moreover, ASM 120 states in part:

Functional Assessment

The **Functional Assessment** module of the **ASCAP** comprehensive assessment is the basis for service planning and for the HHS 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 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. Ms. Smith would be eligible to receive assistance with IADL's [sic] 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.

ASM 120, pages 2-4 of 7

Here, as described above, the Department decided to reduce Petitioner's HHS by removing assistance with transferring and reducing the assistance authorized for bathing and toileting.

In support that decision, the ASW testified that the reduction was based solely on Petitioner's reports regarding what assistance Petitioner was receiving and how often. In particular, the ASW testified that Petitioner did not report receiving any assistance with mobility; she only stated that she needs bathing assistance 4 days a week; and that, with respect to toileting, she only reported needing help getting on-and-off the toilet and that she only needed such help 3 days a week.

In response, Petitioner testified that she cannot say how many days per week she needs assistance with toileting and bathing as it depends on how she is feeling and if any of her conditions flare up, but that she needs such assistance most days. She also testified that she reported those circumstances to the ASW and initially said that she needed assistance with bathing and toileting every day, but that the ASW would not accept that answer and forced her to identify a lesser amount of days that she needed

assistance. With respect to toileting assistance, Petitioner did confirm that she only needs help sitting down and getting up from the toilet. Petitioner further testified that she needs assistance with mobility and that, in order to ambulate, she uses a walker inside the home and the physical assistance of her home help provider outside of the home.

Petitioner bears the burden of proving by a preponderance of the evidence that the Department erred in reducing her HHS. Moreover, the undersigned Administrative Law Judge reviews the Department's decision in light of the information that was available at the time the decision was made.

Given the available information and applicable policies in this case, Petitioner has failed to meet her burden of proof and the Department's decision must be affirmed.

For example, while it is undisputed that Petitioner needs to use a walker while in the home and that such a need ranks her as a "3" in mobility, which is a rank at which home help payments may be authorized, it is also undisputed that Petitioner's need for assistance with mobility inside the home is met by her adaptive equipment and that her home help provider does not assist her with that task inside the home. Moreover, while Petitioner may need physical assistance from others while outside of her home, such assistance is not a covered service in this case as the functional assessment definition of mobility in the Home Help Program indicates that the assistance is only for mobility inside the home: "**Mobility** - 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." See ASM 121 (5-1-2013), page 4. Accordingly, while Petitioner was correctly ranked a "3" in mobility, the Department also properly removed any assistance with that task.

Additionally, with respect to toileting and bathing assistance, the type of assistance Petitioner needs and the minutes per day authorized for assistance is not disputed. Instead, Petitioner argues that she should be authorized for such assistance 7 days per week, rather than the 4 or 3 days per week approved by the Department, given her need for help. However, the undersigned Administrative Law Judge does not find Petitioner's testimony that she needs assistance with those two tasks every day to be credible. Even Petitioner concedes that she has good days and bad days and it is implausible that the ASW would force the Petitioner to report a lesser number of days than Petitioner needed, especially where Petitioner was approved for assistance with another task 7 days per week. Overall, the undersigned Administrative Law Judge finds the ASW to be more credible as to what was reported during the assessment and that, based on those reports, the Department properly reduced Petitioner's assistance with toileting and bathing.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly reduced Petitioner's HHS.

IT IS, THEREFORE, ORDERED that:

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

SK/tm



Steven Kibit

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

DHHS Department Rep.

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