



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

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Date Mailed: November 4, 2016, 2016
MAHS Docket No.: 16-011164
Agency No.: ██████████
Petitioner: ██████████

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, a telephone hearing was held on October 4, 2016. Petitioner appeared on her own behalf. ██████████ Petitioner's home help provider, testified as a witness for Petitioner. ██████████, Petitioner's grand-daughter, was also present during the hearing. ██████████, Appeals Review Officer, represented the Respondent Department of Health and Human Services. ██████████, Adult Services Worker (ASW), testified as a witness for the Department. ██████████, Adult Services Supervisor, was also present during the hearing.

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 sixty-eight-year-old Medicaid beneficiary who has been approved for HHS since August of 2007. (Exhibit A, pages 6-7).
2. Specifically, Petitioner had been approved for 74 hours and 1 minute per month of HHS, with a total monthly care cost of ██████████, for assistance with bathing, dressing, toileting, transferring, eating, mobility, taking medications, housework, laundry, shopping and meal preparation. (Exhibit A, pages 17-19).

3. On July 13, 2016, the ASW completed a home visit and reassessment with Petitioner. (Exhibit A, page 11).
4. During that home visit, Petitioner demonstrated an ability to transfer on her own with the use of a push walker. (Exhibit A, page 11; Testimony of ASW).
5. Petitioner also reported that her medications are set up monthly by her provider in a monthly pill container with medications identified for each day. (Exhibit A, page 11).
6. The ASW further noted that the HHS authorized for assistance with shopping, laundry and meal preparation had not been previously prorated, but that it needed to be because Petitioner lived in a shared household with another adult. (Exhibit A, page 11).
7. On July 20, 2016, the Department sent Petitioner written notice that, effective August 3, 2016, her HHS would be reduced to [REDACTED] per month. (Exhibit A, pages 8-9).
8. Specifically, the notice indicated that assistance with transferring was being removed, assistance with taking medications was being changed from seven days per week to monthly, and that assistance with laundry, shopping and housework had been previously miscalculated as Petitioner was living in a shared household with another adult. (Exhibit A, page 9).
9. However, while assistance with shopping was only supposed to be prorated by one-half, from 20 minutes a day, 3 days a week, to 10 minutes per day, 3 days per week, the ASW mistakenly changed it to 5 minutes per day, 3 days per week. (Exhibit A, pages 16-19; Testimony of ASW).
10. Petitioner's home help provider was subsequently interviewed via telephone and, during that interview, the provider indicated that she sets up Petitioner's medications weekly. (Exhibit A, page 11; Testimony of ASW).
11. On August 9, 2016, the Department sent Petitioner written notice that her HHS were being increased to [REDACTED] per month, with an effective start date of August 9, 2016, because her assistance with taking medications was being changed from monthly to weekly. (Exhibit A, page 10).
12. Overall, Petitioner is now approved for 56 hours and 23 minutes per month of HHS, with a total monthly care cost of [REDACTED]. (Exhibit A, page 16).
13. On August 16, 2016, the Michigan Administrative Hearing System received the request for hearing filed in this matter. (Exhibit A, pages 8-9).

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.

* * *

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.

Here, the Department reduced Petitioner's HHS after deciding to remove assistance with transferring and to decrease the amount of assistance authorized for taking medications, laundry, shopping and housework.

In support of that decision, the ASW testified that transferring was removed because Petitioner demonstrated an ability to transfer herself, assistance with taking medications was reduced because the provider only assists Petitioner by setting up the medications once a week, and assistance with laundry, shopping, and meal preparation was reduced because Petitioner lives in a shared household with another adult. However, the ASW also acknowledged that she made an error in reducing Petitioner's assistance with shopping because Petitioner's assistance with that task was only supposed to be reduced by one-half pursuant to the Department's proration policy and she instead mistakenly reduced it by more than one half. She also noted that she did not ask whether Petitioner's laundry, shopping or meal preparation were completed separately.

In response, Petitioner's home help provider testified that Petitioner is never left in the house by herself and that Petitioner does share it with another adult. She also testified that, in addition to setting up Petitioner's medications in a monthly box, she also talks pills out of the box and hands them to Petitioner three times a day, Petitioner's home help provider further testified that she assists Petitioner with transferring from the toilet and getting in-and-out of the bath. Additionally, Petitioner's provider testified that she does not wash Petitioner's clothes with any other clothes, the other adult living in Petitioner's home does all of his own shopping, and Petitioner needs all of her meals prepared for her.

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 met that burden of proof and the Department's decision must be reversed. Parts of the Department's decision are clearly correct as, for example, the Department removed assistance with transferring and the only assistance the provider described with respect to that task, *i.e.* assistance in getting on-and-off the toilet and in-and-out of the bathtub, is actually covered by toileting and bathing assistance. However, even if parts of the action were correct, it is also undisputed that the Department erred as even its own witness acknowledged that a mistake had been in reducing Petitioner's assistance with shopping. Moreover, as provided in the above policy, assistance with laundry, shopping and meal preparation need not be prorated if it can be clearly documented that the IADLs for the eligible client are completed separately from others in the home and, in this case, the ASW never asked how they are performed and never gave Petitioner or the provider an opportunity to demonstrate that the tasks are completed separately.

Accordingly, given the mistakes made by the Department, the undersigned Administrative Law Judge finds that Petitioner has met her burden of proving by a preponderance of the evidence that the Department erred and that the reduction in this case must therefore be reversed.

DECISION AND ORDER

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

IT IS, THEREFORE, ORDERED that:

The Department's decision is **REVERSED** and it must initiate a reassessment of Petitioner's HHS.

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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