



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 7, 2016
MAHS Docket No.: 16-011184
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 Petitioner's request for a hearing.

After due notice, a telephone hearing was held on October 28, 2016. Petitioner appeared and testified on her own behalf. ██████████, the owner of the Home Help Provider Agency that assists Petitioner, also testified as a witness for Petitioner. ██████████ ██████████, Appeals Review Officer, represented the Respondent Department of Health and Human Services (Department). ██████████, Adult Services Worker (ASW), and ██████████, Adult Services Supervisor, testified as witnesses for Respondent.

ISSUE

Did the Department properly deny Petitioner's request for additional 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 forty-nine-year-old Medicaid beneficiary who has been diagnosed with lumbosacral spondylosis and calcaneal spur. (Exhibit A, pages 7, 9; Exhibit B, page 1).
2. Due to impairments caused by those diagnoses, Petitioner has been approved for 25 hours and 17 minutes of HHS per month for assistance with bathing, taking medications, housework, laundry, shopping, and meal preparation. (Exhibit A, pages 8, 13).

3. Petitioner's home help provider was previously an individual paid at a rate of [REDACTED] per hour and, with that hourly rate, Petitioner was approved for [REDACTED] per month of HHS. (Exhibit A, page 10; Testimony of ASW).
4. On June 24, 2016, Petitioner came into the Department's office to change home help providers. (Exhibit A, page 11).
5. Petitioner's new home help provider is an agency, which is paid a rate of [REDACTED] per hour. (Testimony of ASW).
6. On June 27, 2016, the Department sent Petitioner a written Services and Payment Approval Notice indicating that, effective June 1, 2016, a new home help provider was enrolled, with a pay rate of [REDACTED] per hour. (Exhibit A, page 10).
7. With the change in the provider pay rate, the monthly care cost for Petitioner's HHS increased to [REDACTED] per month. (Exhibit A, page 15).
8. On June 30, 2016, the ASW completed a home visit and six month review with Petitioner. (Exhibit A, page 11).
9. During that assessment, Petitioner reported that she had recently had back surgery and had to wear a back support for two hours every day, but the ASW also observed her walking independently and Petitioner reported that there has been no changes in her needs. (Exhibit A, page 11; Testimony of ASW).
10. On August 16, 2016, the Michigan Administrative Hearing System received the request for hearing filed in this matter. (Exhibit A, page 6).

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.

Adult Services Manual 101 (8-1-2016) (hereinafter "ASM 101") and Adult Services Manual 120 (8-1-2016) (hereinafter "ASM 120") addresses 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.
- Light housecleaning.

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.

* * *

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.

ASM 101, pages 1-3, 5

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.

Complex Care Needs

Complex care refers to conditions requiring intervention with special techniques and/or knowledge. These complex care tasks are performed on client's whose diagnoses or conditions require more management. The conditions may also require special treatment and equipment for which specific instructions by a health professional or client may be required in order to perform.

- Eating and feeding.
- Catheters or legs bags.
- Colostomy care.
- Bowel program.
- Suctioning.
- Specialized skin care.
- Range of motion exercises.
- Peritoneal dialysis.
- Wound care.

- Respiratory treatment.
- Ventilators.
- Injections.

When assessing a client with complex care needs, refer to the complex care guidelines on the adult services home page.

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.

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 suggested 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 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.

ASM 120, pages 2-7

Here, as described above, Petitioner has been approved for 25 hours and 17 minutes of HHS per month for assistance with bathing, taking medications, housework, laundry, shopping, and meal preparation.

In support of that amount, the ASW testified that she sent Petitioner a payment and approval notice after the change in providers, which also required a change in the hourly pay rate, but that Petitioner reported no changes during the subsequent home visit, and there was no medical need for an increase in HHS. The ASW also testified that she and Petitioner discussed Petitioner's recent surgery, with Petitioner saying that it went well, and they went through all tasks covered by HHS. The ASW further testified that Petitioner was walking independently and without the use of a cane or walker during the home visit, but that Petitioner has had to use them in the past, though Petitioner does not need HHS for assistance with mobility either way as no provider physically assists her. The ASW also testified that the updated medical needs form submitted by Petitioner changed nothing.

In response, Petitioner testified that she never walked down and opened the door for the ASW as stated by the ASW. Petitioner also testified that the ASW only stayed for three minutes; the ASW was at the door the entire time and never went into Petitioner's home; and that the ASW was disrespectful to her. Petitioner further testified that the ASW could not make a proper assessment in that amount of time and that Petitioner was at her worst following her recent surgery.

██████████, the owner of the home help provider agency that assists Petitioner, testified that she was in the parking lot while the home visit occurred, but on the telephone with

Petitioner, and that the ASW never went into the apartment. [REDACTED] also testified that she and Petitioner have scheduled appointments with the ASW three times, only for the ASW to cancel while Petitioner and the provider were already in the lobby. [REDACTED] further testified that Petitioner recently had surgery and her needs have increased, as indicated on the new medical needs form, and that Petitioner needs assistance with transferring, mobility, dressing, and bathing every day.

Petitioner bears the burden of proving by a preponderance of the evidence that the Department erred in approving 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. Petitioner's main complaints appear to be about problems she is having with the ASW assigned to her case, but such general complaints are outside the scope of this proceeding and the undersigned Administrative Law Judge's jurisdiction is limited to reviewing specific negative actions taken by the Department with respect to Petitioner's HHS. Moreover, regarding the number of hours authorized, which is within the undersigned Administrative Law Judge's jurisdiction, the ASW credibly testified regarding what was reported to her during the home visit while neither Petitioner nor the owner of the provider agency gave any specific details of what additional assistance is required or how much more assistance is required. Merely stating that Petitioner has had surgery is not enough and, while the updated medical needs form appeared to check that assistance is needed with additional activities, it also provided no details regarding any such assistance and, regardless, the medical professional does not prescribe or authorize personal care services.

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 request for additional 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.

[REDACTED]
[REDACTED]
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