



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: [REDACTED]
MAHS Docket No.: 16-000021
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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 [REDACTED], mother, appeared on behalf of the Petitioner. [REDACTED], father, appeared as a witness for the Petitioner. [REDACTED], Appeals Review Officer, represented the Department of Health and Human Services (Department). [REDACTED], Adult Services Worker (ASW), appeared as a witness for the Department.

The hearing was originally scheduled for [REDACTED]. Due to a State of Michigan office closure on that date, the hearing was adjourned and re-scheduled for [REDACTED].

During the hearing proceedings, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-21. The hearing record was left open for the Department to provide a copy of the medical documentation they had considered regarding Petitioner's wife. The additional documentation was received [REDACTED], and has been admitted as Exhibit B, pp. 1-3.

ISSUE

Did the Department properly terminate Petitioner's Home Help Services (HHS) case?

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 authorized for HHS since [REDACTED]. (Exhibit A, p. 12)

2. The Department had been authorizing HHS knowing that Petitioner was married. (Exhibit A, p. 17; ASW Testimony)
3. Petitioner's [REDACTED] year old mother was the enrolled HHS provider, but care was actually being provided by a combination of Petitioner's wife, mother and father. (Exhibit A, pp. 12 and 18; Testimony of mother and father)
4. On [REDACTED], the ASW went to Petitioner's home to conduct a redetermination. This was the first time this ASW assessed Petitioner's case. (Exhibit A, p. 17; ASW Testimony)
5. On [REDACTED], an Advance Negative Action Notice was issued to Petitioner stating the HHS case would close effective [REDACTED], because Petitioner is married and the spouse is legally responsible for his care, therefore Petitioner is not eligible for services. (Exhibit A, pp. 15-16)
6. On [REDACTED], medical documentation was submitted to the Department regarding Petitioner's wife, which did not document any diagnosis. (Exhibit B, pp. 1-3)
7. On [REDACTED], an Advance Negative Action Notice was issued to Petitioner stating the HHS case would close effective [REDACTED], because Petitioner is married and has a legally responsible person to care for him. (Exhibit A, pp. 5 and 13-14)
8. Petitioner's Request for Hearing was received by the Michigan Administrative Hearing System on [REDACTED]. (Exhibit A, pp. 4-11)

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, 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.

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.

Adult Services Manual (ASM) 101,
December 1, 2013, pp. 1-2 of 5

Adult Services Manual (ASM) 140, also addresses HHS payments:

No payment can be made unless the provider has been enrolled in Bridges. Adult foster care, homes for the aged and home help agency providers must also be registered with Vendor Registration; see ASM 136, Agency Providers.

Note: The adult services home page provides a link to the provider enrollment instructions located on the Office of Training and Staff Development web site.

Home help services payments to providers must be:

- Authorized for a specific period of time and payment amount. The task is determined by the comprehensive assessment in ASCAP and will automatically include tasks that are a level three or higher.
- Authorized **only** to the person or agency actually providing the hands-on services.

Note: An entity acting in the capacity of the client's fiscal intermediary is not considered the provider of home help and **must not** be enrolled as a home help provider; see ASM 135, Home Help Providers.

- Made payable jointly to the client and the provider.

Exception: Authorizations to home help agency providers are payable to the provider only. There are circumstances where payment authorizations to the provider only are appropriate, for example, client is physically or mentally unable to endorse the warrant. All single party authorizations must be approved by the supervisor.

- Prorate the authorization if the MA eligibility period is less than the full month.

Example: A client meets his/her MA deductible on the third of every month. ASCAP will process prorated month (s) automatically. To prorate manually, divide the monthly care cost by the number of days in the month. Multiple the daily rate by the number of eligible days. Refer to the ASCAP User Guide for additional instructions on steps for prorating in ASCAP.

- Do **not** authorize payments to a **responsible relative**.
- Do not authorize a home help payment if there is not a MSA-4678 on file with the Michigan Department of Community Health; see ASM 135, Home Help Providers.

Any payment authorization that does **not** meet the above criteria must have the reason fully documented in the **Payments** module, exception rationale box, in **ASCAP**. The supervisor will approve or deny the authorization and provide comments in the rationale box as needed.

Adult Services Manual (ASM) 140,
May 1, 2013, pp. 1-2 of 4
(Underline added by ALJ)

Adult Services Manual (ASM) 105, 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 indicating a functional limitation of level 3 or greater for at least one activity of daily living (ADL).
- Appropriate Level of Care (LOC) status.

Medical Need Certification

Medical needs are certified utilizing the DHS-54A, Medical Needs, form and must be completed by a Medicaid enrolled medical professional. The medical professional must hold one of the following professional licenses:

- Physician (M.D. or D.O.).
- Physician Assistant.
- Nurse practitioner.
- Occupational therapist.
- Physical therapist.

The DHS-54A or veterans administration medical form are acceptable for individuals treated by a VA physician; see ASM 115, Adult Services Requirements.

Necessity for Service

The adult services specialist is responsible for determining the necessity and level of need for home help services based on all of the following:

- 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 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 or her daughter agrees to assist her at no charge. Ms. Smith would be eligible to receive assistance with IADL's 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.

- 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,
April 1, 2015, pp. 1-4 of 4

Adult Services Manual (ASM) 120, addresses the adult services comprehensive assessment:

INTRODUCTION

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 must 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. This form is primarily used for APS cases.
- Follow rules of confidentiality when home help cases have companion adult protective services 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 level 3 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 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 or her daughter agrees to assist her at no charge. Ms. Smith would be eligible to receive assistance with IADL's 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.

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. When hours exceed the RTS, a rationale **must** be provided.

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 allotted 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 adjoined 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.

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.

Example: Mrs. Smith is in need of home help services. Her spouse is employed and is out of the home Monday thru Friday from 7a.m. to 7p.m. The specialist would not approve hours for shopping, laundry or house cleaning as Mr. Smith is responsible for these tasks.

Example: Mrs. Jones is in need of home help services. Her spouse's employment takes him out of town Monday thru Saturday. The specialist may approve hours for shopping, laundry or house cleaning.

Adult Services Manual (ASM) 120,
December 1, 2013, pp. 1-6 of 7
(Underline added by ALJ)

Certain services are not covered by HHS. ASM 101 provides a listing of the services not covered by HHS.

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.

Adult Services Manual (ASM) 101,
December 1, 2013, p. 5 of 5.
(Underline added by ALJ)

Petitioner is a Medicaid beneficiary who had been authorized for HHS since [REDACTED]. (Exhibit A, p. 12) The Department had been authorizing HHS knowing that Petitioner was married. (Exhibit A, p. 17) The ASW explained that at the time of the Petitioner's initial HHS approval, his wife had a physical impairment, specifically a hip replacement, in addition to her ongoing mental impairment and received HHS herself. (Testimony of ASW)

On [REDACTED], the ASW went to Petitioner's home to conduct a redetermination. This was the first time this ASW assessed Petitioner's case. The ASW determined that Petitioner is not eligible for HHS because he is married and the spouse is legally responsible for his care. The ASW acknowledged that Petitioner's wife has a mental impairment, but determined that Petitioner's wife would still be able to provide care for Petitioner. (Exhibit A, p. 17; ASW Testimony)

It appears that the first Advance Negative Action Notice, dated [REDACTED], was issued before Petitioner was given an opportunity to provide medical documentation to verify whether his wife is able to provide care. (Exhibit A, pp. 15-16) However, the evidence indicates that the Department did not implement that proposed termination on the [REDACTED], effective date. Rather, another determination was made after medical verification regarding Petitioner's wife was received. (Exhibit A, pp. 5 and 13-14; Exhibit B, pp. 1-3)

Medical documentation regarding Petitioner's wife was submitted to the Department on [REDACTED]. However, this documentation did not document any diagnosis for Petitioner's wife. (Exhibit B, pp. 1-3) On [REDACTED], an Advance Negative Action Notice was issued to Petitioner stating the HHS case would close effective [REDACTED], because Petitioner is married and has a legally responsible person to care for him. (Exhibit A, pp. 5 and 13-14)

Petitioner's [REDACTED] year old mother was the enrolled HHS provider. (Exhibit A, pp. 12 and 18) However, the testimony established that care was actually being provided by a combination of Petitioner's wife, mother and father. Petitioner's parents explained that Petitioner's wife has mental impairments and cannot provide all the care that Petitioner needs. Petitioner's wife is also not physically able to assist with some care because Petitioner is a 210 pound man. According, Petitioner's parents may perform all or just assist with part of some caregiving activities, and only supervise Petitioner's wife performing other caregiving activities. Examples discussed included getting Petitioner out of the tub, administering medications, and meal preparation. Lastly, the testimony indicated Petitioner's mother provides both Petitioner and his wife with assistance in additional areas, such as managing finances. (Testimony of mother and father)

Overall, the evidence supports the Department's [REDACTED], determination to terminate Petitioner's HHS services effective [REDACTED], based on the information available at that time. The above cited ASM 101 and 120 policies are clear that HHS cannot be authorized for services a responsible relative, such as a spouse, is able and available to provide. Regarding being unable to provide the care, ASM 120 specifically requires that the responsible person has disabilities of their own which

prevent them from providing care and that these disabilities must be documented and verified by a medical professional on the DHS-54A, Medical Needs form. The Medical documentation submitted to the Department on [REDACTED], included a DHS-54A, Medical Needs form for Petitioner's wife, but no diagnosis was listed. (Exhibit B, p. 1) The attached letter from the doctor stated that Petitioner's wife has disabilities of her own that make it difficult to perform some tasks for Petitioner, but did not specify what those disabilities were. (Exhibit B, p. 2) Additionally, the above cited ASM 140 policy specifies that HHS payments cannot be made unless the provider has been enrolled and that the HHS payments can only be authorized to the person or agency actually providing the hands-on service. The testimony of Petitioner's parents acknowledged that Petitioner's wife is actually providing some of the hands on care. Lastly, some of the assistance Petitioner's mother provides is not included under the HHS program, such as managing finances.

Petitioner and his family may wish to inquire about other programs, such as those through Community Mental Health (CMH), which may include other types of assistance that are not covered services in the HHS program. If there is more specific medical documentation that can be provided regarding his wife, Petitioner may also wish to reapply for HHS, but should also provide clear information regarding who would be the enrolled HHS provider(s) and what hand-on care is actually provided by them.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly terminated Petitioner's Home Help Services (HHS) case based on the available information.

IT IS, THEREFORE, ORDERED that:

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

CL/cg



Colleen Lack
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

[REDACTED]

Authorized Hearing Rep.

[REDACTED]

Agency Representative

[REDACTED]

DHHS Department Rep.

[REDACTED]

DHHS -Dept Contact

[REDACTED]

Petitioner

[REDACTED]