



RICK SNYDER
GOVERNOR

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

MIKE ZIMMER
DIRECTOR

[REDACTED]

Date Mailed: March 15, 2016
MAHS Docket No.: 16-000107
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Landis Y. 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 [REDACTED]. Petitioner's Guardian (and Grandmother), [REDACTED], appeared and testified on Petitioner's behalf. [REDACTED], Appeals Review Officer, represented the Department of Health and Human Services (the Department). [REDACTED], Adult Services Worker appeared and testified as a witness for the Department.

State's Exhibit A pages 1-49 were admitted as evidence.

ISSUE

Did the Department properly deny Petitioner's request for additional Home Help Services (HHS)?

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 received SSI benefits.
2. Petitioner's Date of Birth is [REDACTED].
3. Petitioner is diagnosed with: cerebral palsy, seizure disorder, hydrocephaly, and poor balance. He has had 69 brain operations over the course of [REDACTED] years. Petitioner has poor coordination and delayed development in walking and talking. He has extremely poor balance and wears a gait belt.

4. Petitioner was receiving HHS in the amount of \$ [REDACTED]. (Respondent's Exhibit A page 15)
5. On [REDACTED], Petitioner fell and broke his clavicle.
6. Petitioner was placed in a special needs group home for four months because he was a two person lift and needed extra help.
7. On [REDACTED], Petitioner returned home.
8. On [REDACTED], Petitioner's Guardian contacted the Department to have Petitioner's HHS reinstated.
9. On [REDACTED], Petitioner submitted an Adult Services Application
10. On [REDACTED], Petitioner's physician submitted a Medical Needs form which indicated that Petitioner has a certified Medical need for assistance with all Activities of Daily Living (ADLs) and Incidental Activities of Daily Living (IADLs), as well as having complex care needs for range of motion. (Respondent's Exhibit A page 12)
11. On [REDACTED], the Department sent Petitioner a Services Approval Notice stating that Petitioner's Services were approved effective [REDACTED] in the amount of \$ [REDACTED] per month. (Respondent's Exhibit A page 9)
12. Petitioner requires assistance with eating, toileting, bathing, grooming, dressing, transferring, mobility, taking medications, meal preparation, shopping, laundry and housework. (State's Exhibit A page 16)
13. On [REDACTED], Petitioner filed a request for a hearing to contest the reduction of HHS and the start date for HHS stating: I do not understand how my benefits can be cut by 15% when I require a minimum of 25% more care. (Respondent's Exhibit A page 7)
14. On [REDACTED], the Adult Services Worker conducted an in-home assessment with Petitioner and her father.
15. The Adult Services Worker (ASW) determined that Petitioner should have a ranking of '5' for bathing, '4' for grooming, dressing, toileting, transferring, '5' for continence, '3' for eating '4' for mobility, '5' for medication, housework, laundry, shopping and meal preparation. (State's Exhibit A page 20)
16. The Department caseworker notes that Petitioner needs assistance with bathing. Client needs help in and out of the tub. Provider has to soap up the washcloth, wash the client's body and rinse off.

17. The Department caseworker notes that Petitioner needs assistance with grooming – Client has hand tremors and needs assistance with brushing teeth, combing hair and shaving.
18. The Department caseworker notes that Petitioner needs assistance with dressing – Client is only able to put on socks. Client needs help with putting on all other articles of clothing, buttoning and zipping. (Respondent's Exhibit A page 20)
19. The Department caseworker notes that Petitioner needs assistance with toileting – Client will urinate in toilet while holding onto someone. Client needs help with wiping after bowel movement.
20. The Department caseworker notes that Petitioner needs assistance with eating – Client needs his food cut up for him.
21. The Department caseworker notes that Petitioner needs assistance with transferring – Client needs help with lowering onto furniture and getting up from a sitting position.
22. The Department caseworker notes that Petitioner needs assistance with mobility – Client wears a gait belt due to poor balance. Client has to hold on to someone at all times while walking.
23. The Department caseworker notes that Petitioner needs assistance with medication – client has to have all medications administrated to him.
24. The Department caseworker notes that Petitioner needs assistance with housework, laundry, shopping and meal preparation – client is unable to complete any of these tasks due to his limited ability to bend, stand, and stoop on his own. (Respondent's Exhibit A page 21)

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 statute, 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.

A referral may be received by phone, mail or in person and must be entered on ASCAP upon receipt. The referral source does not have to be the individual in need of the services. The adult services specialist must determine eligibility within the 45 day standard of promptness which begins from the time the referral is received and entered on ASCAP. The referral date entered on ASCAP must be the date the referral was received into the local office. The computer system calculates the 45 days beginning the day after the referral date and counting 45 calendar days. If the due date falls on a weekend or holiday, the due date is the next business day.

When a signed DHS-390 serves as the initial request for services, the referral date must be the date the application was received in the local office. ASM 110, page 1

Adult Services Manuals 120 (12-1-2013) (hereinafter "ASM 120") address the issues of what services are included in Home Help Services and how such services are assessed. Pertinent department policy states:

Home Help Payment Services

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.

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 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. ASm 120, pages 1-2

The **Bridges Eligibility** module in **ASCAP** contains information pertaining to the client's type of assistance (TOA) eligibility, scope of coverage and level of care.

The **Medical** module in **ASCAP** contains information regarding the physician(s), diagnosis, other health issues, adaptive equipment, medical treatments and medications. The medical needs certification date is entered on the diagnosis tab, at initial certification and annually thereafter, if applicable; see ASM 115, Adult Services Requirements.

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.

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.

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 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.

Expanded home help services (EHHS) exists if all basic home help services eligibility criteria are met and the assessment indicates the client's needs are so extensive that the cost of care cannot be met within the monthly maximum payment level of \$ [REDACTED].

In the instant case, Petitioner's needs are so extensive that the cost of care cannot be met within the monthly maximum payment level. Petitioner does have medical certification for complex care needs and a complex care assessment should have been conducted to determine Petitioner's appropriate level of care for services. Petitioner should be eligible for Expanded Home Help Services.

Petitioner requires assistance with all ADLs and IADLs. (State's Exhibit A page 21)

Petitioner's representative has established through medical diagnosis and credible testimony that Petitioner is a quadriplegic and requires complete care as she has no mental orientation or comprehension, which is not accounted for in the ASW's assessment for level of HHS services. The Department's determination of the level of services for Petitioner cannot be upheld under the circumstances.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department failed to appropriately conduct a Complex Care Assessment and did not properly assess Petitioner's level of care rankings.

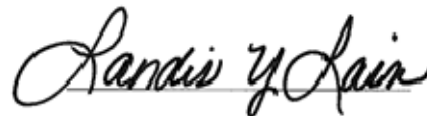
IT IS THEREFORE ORDERED THAT:

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

If Petitioner is otherwise eligible benefits the Department is **ORDERED** to:

1. Perform a complex care assessment and properly assess Petitioner's level of care rankings;
2. Properly determine Petitioner's condition and level of care needs for all ADLs and IADLs effective the date of current application approval and;
3. Pay to Petitioner all retroactive benefits to which he is entitled, effective the date of date of the current application approval.

LL ■



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]

DHHS-Location Contact

[REDACTED]

Authorized Hearing Rep.

[REDACTED]

DHHS Department Rep.

[REDACTED]

DHHS -Dept Contact

[REDACTED]

Petitioner

[REDACTED]