



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 31, 2016
MAHS Docket No.: 16-000713
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Landis 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 Petitioner's request for a hearing.

After due notice, a telephone was held on [REDACTED]. Petitioner appeared and testified. Petitioner alleges that he does not speak English. Petitioner's translator, provider and Administrative Hearings Representative, [REDACTED] appeared and testified at the hearing on Petitioner's behalf. Allison Pool, Appeals Review Officer, represented the Department of Health and Human Services (Department/State/Respondent). [REDACTED], Adult Services Specialist and [REDACTED], Adult Services Supervisor, appeared witnesses for the Department.

State's Exhibit A, pages 1-32 and Petitioner's Exhibits 1-40 were admitted on the record as evidence.

ISSUE

Did the Department properly cancel 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, date of birth [REDACTED].
2. Petitioner was receiving HHS benefits.
3. Petitioner's spouse resides in the home with him.

4. Petitioner is diagnosed with blindness, hypertension, diabetes and chronic lumbar radiculopathy. (State's Exhibit A page 16)
5. On [REDACTED], the Adult Services Specialist conducted an annual assessment interview with Petitioner's provider.
6. On [REDACTED], the Department specialist received a Medical Needs form from Petitioner's husband which indicated a diagnosis for back pain; also indicating that he needs assistance with grooming and IADLs for six months.
7. On [REDACTED], petitioner's spouse returned a Medical Needs form to the Department which did not indicate that Petitioner's spouse is disabled. The form did not indicate that Petitioner's spouse has a certified medical need for assistance with personal care activities. (State's Exhibit A page 10)
8. On [REDACTED], the Department sent Petitioner an Adequate Negative Action Notice informing Petitioner that HHS would be cancelled effective [REDACTED], because Petitioner had a responsible relative living in the home. (State's Exhibit A page 11)
9. On [REDACTED], Petitioner's Request for Hearing was received by the Michigan Administrative Hearing System. (State's Exhibit A page 5)

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.

Adult Services Manual (ASM) 101, 12-1-13, 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.

**Adult Services Manual (ASM) 101,
12-1-2013, Page 1 of 4.**

Adult Services Manual (ASM) 105, 12-1-13, 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 (DHS-324) indicating a functional limitation of level 3 or greater for activities of daily living (ADL).
- Appropriate Level of Care (LOC) status.

Necessity For Service

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

- 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.

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 if the assessment determines a need at a level 3 or greater.

- 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,
12-1-13, Pages 1-3 of 3**

Adult Services Manual (ASM 120, 12-1-2013), pages 1-4 of 5 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 will 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; see RFF 1555. The form is primarily used for APS cases.
- Follow rules of confidentiality when home help cases have companion APS 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 3 level 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.

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 IADLs if the assessment determined a need at a level 3 or greater.

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 higher, 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 rationale **must** be provided.

An assessment of need, at a ranking of 3 or higher, 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 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.

**Adult Services Manual (ASM) 120, 12-1-2013,
Pages 1-5 of 5**

In the instant case the Adult Services Specialist conducted the comprehensive assessment interview and determined that Petitioner lives in the home with his spouse.

Petitioner alleges that his spouse takes medication that makes her sleep so she cannot care for him. Medical documentation in the record dated [REDACTED], indicates that Petitioner's spouse's date of birth is [REDACTED]. She worked as a teacher in Iraq for twenty years. She is currently unemployed. She suffers from depression. She came to America in [REDACTED]. She has an AXIS V diagnosis of 50 and also suffers from asthma, low back pain, status post sinus surgery and hypotension (episodic). (State's Exhibit A pages 5-7) A [REDACTED] doctor's letter indicates that petitioner's spouse is diagnosed with: chronic lower back pain, lumbar radiculitis, Degenerative joint disease and depression. (State's Exhibit A page 9)

Based on the evidence presented, Petitioner has failed to prove, by a preponderance of evidence, that the denial of HHS was inappropriate. Petitioner's spouse is a responsible relative who lives in the home with Petitioner. She has not been determined to be disabled. She has not been determined unable to assist Petitioner with Activities of Daily Living. She has not established that she works outside the home. Evidence on the record indicates that Petitioner's spouse is not absent from the home for an extended period due to employment, school or other legitimate reasons. Petitioner's spouse has not established that she has disabilities of her own which prevents her from providing care to Petitioner. (ASM 120 page 6). The spouse has not established that she is unavailable or unable to provide the services to Petitioner.

Petitioner has not established by the necessary competent, substantial and material evidence on the record that his spouse does not reside in the home with him or that she is absent from the home for extended times for legitimate reasons. The evidence on the record was not sufficient to establish that the responsible adult in the home was unable to assist Petitioner with Activities of Daily Living. The Specialist provided credible, detailed testimony regarding her observations of, and discussions with, Petitioner and his provider. Accordingly, the cancellation of Petitioner's HHS is upheld.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that, based on the available information, the Department properly denied Petitioner's HHS.

IT IS THEREFORE ORDERED THAT:

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

LL ■



Landis Lain
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

Petitioner

[REDACTED]

Agency Representative

[REDACTED]

DHHS Department Rep.

[REDACTED]

DHHS -Dept Contact

[REDACTED]

Authorized Hearing Rep.

[REDACTED]

DHHS-Location Contact

[REDACTED]