



RICK SNYDER
GOVERNOR

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

MIKE ZIMMER
DIRECTOR



Date Mailed: [REDACTED]
MAHS Docket No.: 16-002620
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Robert J. Meade

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 hearing was held on [REDACTED]. Petitioner appeared on his own behalf. [REDACTED], Petitioner's caregiver from All Needs Senior Services appeared as a witness. [REDACTED], Appeals Review Officer, represented the Department of Health and Human Services. [REDACTED], Adult Services Worker (ASW) and [REDACTED], Adult Services Supervisor appeared as witnesses for the Department.

ISSUE

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

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 [REDACTED] year-old Medicaid beneficiary, born [REDACTED], who is diagnosed with quadriplegia, pressure ulcers, dislocation of left hip, chronic pain, hypertension, blood transfusion, osteomyelitis, anemia, coronary artery disease, asthma, congestive heart failure, arthritis, stroke, thyroid disease, chronic obstructive pulmonary disease, diabetes mellitus, and cancer. (Exhibit A, p 7; Testimony)

2. Petitioner has been receiving HHS since at least [REDACTED] and is currently authorized via previous court order to receive 16 hours of HHS per day. At a meeting with Department representatives in [REDACTED], Petitioner requested 24 hours per day of HHS. (Exhibit A, pp 19, 23-26; Testimony)
3. Department representatives gave Petitioner a verbal denial of the request for 24 hours of HHS per day, informing Petitioner that they could not authorize any further HHS for him without a court order. The Department never sent Petitioner a written denial of his request for 24 hours per day of HHS. (Exhibits A, 1; Testimony)
4. On [REDACTED], Petitioner's Request for Hearing was received by the Michigan Administrative Hearing System. (Exhibit 1)

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 120, 12-1-13), pages 1-6 of 7 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. 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 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 IADLs if the assessment determined 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 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, 12-1-13,
Pages 1-6 of 7*

Adult Services Manual 101, Available Services, provides:

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).

*ASM 101, 12-1-13
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The Department's Adult Services Supervisor testified that Petitioner is currently authorized to receive 16 HHS hours per day per a previous court order, which is more than anyone else in the State of Michigan. The Department's Adult Services Supervisor indicated that those hours are allocated to Petitioner via a Time and Task schedule (Exhibit A, p 26) and that the Department cannot authorize any further hours without a court order because Petitioner is already receiving more than the maximum number of HHS hours allowed by policy. The Department's Adult Services Supervisor pointed out that per policy, HHS is not to be used for supervising, reminding, or cueing and that HHS can only be allocated when a worker is actually doing something for a client. The Department's Adult Services Supervisor testified that Petitioner's 16 HHS hours per day did not have to be consecutive and that he could have his caregivers come in for shorter shifts, which would leave him alone for shorter periods of time and allow him to receive the care that he needs. The Department's Adult Services Supervisor indicated that Petitioner's providers are aware of their ability to adjust the schedule to meet Petitioner's needs. The Department's Adult Services Supervisor testified that Petitioner has been provided information regarding additional resources that might be available to him in the community.

Petitioner testified that he needs care 24 hours per day and his doctor has ordered that he receive such care. Petitioner testified that he is a quadriplegic and cannot do anything for himself. Petitioner indicated that the current amount of care does not account for emergencies and if there was an emergency in his apartment, he would not be able to get out. Petitioner testified that his life does not just involve doing this and that; he is completely paralyzed and needs care and monitoring at all times for his own health and safety. Petitioner indicated that he has developed severe bed sores over the years because he does not have sufficient care as he needs to be turned in the bed

frequently. Currently, Petitioner indicated that his caregivers come every morning at 7:00 am and leave each evening at 11:00 pm. When asked if he had asked his caregivers to adjust the schedule as the Department suggested, Petitioner indicated that the workers did not want to do that. Petitioner testified that he does not have a bowel program. Petitioner indicated that he does have nurses come in three days per week to care for him through his health insurance, outside of the care he receives from HHS, but does not receive assistance from any other programs. Petitioner testified that his lack of care causes him to be hospitalized frequently and the cost of one hospitalization could easily pay for his requested 24 hours care. Petitioner indicated that he is not asking for someone to come in and watch him sleep, he needs to be turned every two hours.

Based on the evidence presented, Petitioner has failed to prove, by a preponderance of the evidence that he requires more than the 16 hours per day of HHS that he currently receives. Petitioner already receives more than the maximum HHS normally allowed under the HHS program and he can adjust his caregivers' schedules to better meet his needs. Petitioner's HHS hours do not need to be used consecutively and if the hours were broken up during the day and night, Petitioner could receive the care he needs, as well as the bed turnings he needs every 2 hours during the night. Petitioner has also been provided information regarding additional resources that might be available to him.


Petitioner also indicated in his request for hearing that he needed a new wheelchair. Because wheelchairs are not provided through the HHS program, Appellant was given information at the hearing on how to request a new wheelchair through Medicaid.

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 request for additional HHS.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.



RM/cg

Robert J. Meade
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]

Agency Representative

[REDACTED]

DHHS Department Rep.

[REDACTED]

DHHS -Dept Contact

[REDACTED]

Petitioner

[REDACTED]