



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.: 16-003452
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], the Petitioner, appeared on her own behalf. [REDACTED], husband, and [REDACTED], home care provider (Provider), appeared as witnesses for the Petitioner. [REDACTED], Appeals Review Officer, represented the Department of Health and Human Services (Department). [REDACTED], Adult Services Supervisor, and [REDACTED], Adult Services Worker (ASW), appeared as witnesses for the Department.

During the hearing proceedings, the Department's Hearing Summary Packet was admitted as Exhibit A, pp. 1-29.

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. 11)
2. Petitioner's spouse had also been authorized for HHS. (Exhibit A, p. 8; ASW Testimony)
3. The ASW was assigned to both Petitioner and her spouse's HHS cases. (ASW Testimony)

4. Petitioner's spouse's HHS closed based on the ASW's determination that he no longer qualified for HHS because he did not have a need for assistance with an Activity of Daily Living (ADL) based on the certification from the doctor and the ASW's assessment. (Exhibit A, pp. 8; ASW Testimony)
5. On [REDACTED], the doctor completed a Medical Needs form regarding Petitioner's spouse. The listed diagnosis was ruptured disc in lower back. The doctor certified that Petitioner's husband had a medical need for assistance with listed care activities and circled the activities of meal preparation, shopping, laundry, and housework. It was also marked that the spouse is needed in the home to provide care. (Exhibit A, p. 19)
6. On [REDACTED], the ASW went to Petitioner's home to complete a home visit. Petitioner and her spouse were present. (Exhibit A, p. 14; ASW Testimony)
7. On [REDACTED], the doctor completed a Medical Needs form regarding Petitioner. The listed diagnoses were bilateral trochanteric bursitis, emphysema, bronchitis, and arthritis. The doctor certified that Petitioner had a medical need for assistance with listed care activities and circled the activities of meal preparation, shopping, laundry, and housework. The complex care activity of bowel program was marked with colitis noted. It was also marked that the spouse is needed in the home to provide care. (Exhibit A, p. 18)
8. On [REDACTED], an Advance Negative Action Notice was issued to Petitioner stating her HHS case would close effective [REDACTED], because "Client is married and living with spouse who home help services case closed for non hands on needs. Client is now ineligible to receive home help services." (Exhibit A, pp. 7-9)
9. Petitioner's Request for Hearing was received by the Michigan Administrative Hearing System on [REDACTED]. (Exhibit A, p. 6)
10. Petitioner's home help provider will care for Petitioner and her husband regardless of being paid. (Provider Testimony)

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) 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
(Underline added by ALJ)

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)

Additionally, the Medicaid Provider Manual (MPM) addresses coordination of benefits. In part, this chapter of the MPM states:

Medicaid is considered the payer of last resort.

Medicaid Provider Manual (MPM)
Coordination of Benefits Chapter,
January 1, 2016, p. 1

In this case, the Department terminated Petitioner's HHS case based on a determination that she had a responsible relative in the home that was able and available to provide services. (ASW Testimony)

Petitioner is a Medicaid beneficiary who had been authorized for HHS since [REDACTED]. (Exhibit A, p. 11) Petitioner's spouse had also been authorized for HHS. (Exhibit A, p. 8; ASW Testimony) The ASW was assigned to both Petitioner and her spouse's HHS cases. (ASW Testimony) Petitioner's spouse's HHS closed based on the ASW's determination that he no longer qualified for HHS because he did not have a need for assistance with an ADL based on the certification from the doctor and the ASW's assessment. (Exhibit A, p. 8; ASW Testimony)

The Department provided copies of the verifications received from the doctor that treats both Petitioner and her spouse. On [REDACTED], the doctor completed a Medical Needs form regarding Petitioner's husband listing a diagnosis of ruptured disc in lower back. The doctor certified that Petitioner's husband had a medical need for assistance with listed care activities, but the only circled activities were meal preparation, shopping, laundry, and housework. It was also marked that the spouse is needed in the home to provide care. (Exhibit A, p. 19) On [REDACTED], the doctor completed a Medical Needs form regarding Petitioner listing diagnoses of bilateral trochanteric bursitis, emphysema, bronchitis, and arthritis. The doctor certified that Petitioner had a medical need for assistance with listed care activities, but the only circled activities were meal preparation, shopping, laundry, and housework. The complex care activity of bowel program was marked with colitis noted. It was also marked that the spouse is needed in the home to provide care. (Exhibit A, p. 18)

On [REDACTED], the ASW went to Petitioner's home to complete a home visit. Petitioner and her spouse were present. It was reported that Petitioner's husband helps Petitioner get in/out of the tub. In the narrative from this home visit, the ASW also noted that Petitioner is able to complete small chores and meals. (Exhibit A, p. 14; ASW

Testimony) The ASW ranked Petitioner at functional level 3 for bathing; functional level 4 for housework, shopping laundry, and meal preparation; and functional level 1 for all remaining activities. (Exhibit A, p. 13) HHS hours could not be authorized for bathing because Petitioner's husband is able and available to provide Petitioner with the needed assistance for this activity. When asked, the ASW testified that Petitioner's husband was ranked as a level 3 for the IADLs of housework, shopping laundry, and meal preparation. However, the ASW explained that while both Petitioner and her spouse have somethings they need help with, she determined that Petitioner and her spouse would not be dependent on a worker coming into the home to complete the IADL tasks. Accordingly, the ASW determined that Petitioner's HHS case should be terminated. (ASW Testimony)

Petitioner disagrees with the termination of her HHS case. Petitioner's testimony acknowledged that her husband helps her with activities like bathing and dressing. However, Petitioner explained that for activities like cleaning the house and laundry, she and her husband just cannot do it. (Petitioner Testimony)

Petitioner's husband testified that he cannot go up and down steps and cannot stand for more than 5-10 minutes. Petitioner's husband has ruptured disks in his back and neck, cannot feel either foot, and needs back and hand surgery. (Husband Testimony)

Petitioner's HHS provider testified that Petitioner and her husband each have multiple conditions. Petitioner and her husband cannot climb up and down steps. When shopping, they have to use the shopping cart, their wheelchair and a little handheld thing. The provider stated the Petitioner and her husband are getting worse, indicating their needs for assistance are increasing. However, the provider also testified that she will care for Petitioner and her husband regardless of being paid. (Provider Testimony)

Under the above cited ASM policy, if the assessment determines a need for an ADL at a functional ranking 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. The above cited ASM policy is also clear that HHS cannot be authorized for any assistance that a responsible relative is able and available to provide, including IADLs. In this case, the evidence indicates Petitioner has a need for assistance at functional ranking 3 or greater with at least one ADL, but her husband is able to provide the assistance with ADLs like bathing. (Exhibit A, p. 13; ASW and Petitioner Testimony) Petitioner's testimony indicated HHS is need for assistance with IADLs, such as cleaning the home and laundry. The ASW ranked Petitioner at functional level 4 for the IADLs of housework, shopping, laundry, and meal preparation. (Exhibit A, p. 13) There is no evidence indicating that Petitioner's husband is unavailable to assist Petitioner with any activities. As described above, the parties disagree as to whether Petitioner's husband is able to provide the needed assistance for Petitioner with these IADLs. However, even if it were found that Petitioner's husband was unable to provide the needed assistance with IADLs, Petitioner would still not be eligible for HHS because the provider testified that she will care for Petitioner and her

husband regardless of being paid. (Provider Testimony) As indicated in the above cited MPM policy, Medicaid is a payer of last resort. Accordingly, the Department's determination to terminate Petitioner's HHS case must be upheld.

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.

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

Agency Representative

[REDACTED]

Petitioner

[REDACTED]

DHHS Department Rep.

[REDACTED]

DHHS -Dept Contact

[REDACTED]

DHHS-Location Contact

[REDACTED]