



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

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Date Mailed: January 31, 2017
MAHS Docket No.: 16-011575
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Steven Kibit

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.*, and upon Petitioner's request for hearing. With due notice, an in-person hearing was scheduled for November 22, 2016.

On November 17, 2016, Petitioner's representative filed a Motion for Summary Disposition. However, given the timing of the motion and the lack of a full opportunity for the Respondent Department of Health and Human Services to respond, no ruling was issued prior to the scheduled hearing. Subsequently, the motion was denied on the record on the basis that Petitioner failed to show that there was no genuine issue of material fact and that she should prevail as a matter of law.

The in-person hearing then began as scheduled on November 22, 2016. However, the hearing was not completed during the scheduled time and the Administrative Law Judge determined that the hearing should be continued at a later date. On January 11, 2017, after an adjournment granted at Petitioner's request, the hearing was continued and completed.

██████████, an attorney with ██████████, represented Petitioner during the hearing. Petitioner also testified as a witness on her own behalf.

██████████, Appeals Review Officer, represented the Respondent Department of Health and Human Services. ██████████ Adult Services Supervisor, and ██████████ ██████████ Adult Services Worker, testified as witnesses for the Department.

ISSUE

Did the Department properly reduce 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 sixty-six-year-old Medicaid beneficiary who has been diagnosed with spastic paraplegia, hypertension, diabetes, hyperlipidemia, and diabetic neuropathy. (Exhibit A, pages 12, 14).
2. Since September of 2008, Petitioner has been receiving HHS through the Department. (Exhibit A, page 13).
3. As of January 1, 2016, Petitioner was approved for 114 hours and 27 minutes of HHS per month, with a total monthly care cost of [REDACTED] (Exhibit A, pages 7, 21).
4. Specifically, Petitioner was approved for assistance with the tasks of bathing, grooming, dressing, toileting, eating, taking medications, housework, laundry, shopping, meal preparation, specialized skin care, and range of motion. (Exhibit A, page 7).
5. Assistance with eating was authorized for 10 minutes per day, 6 days per week (4:18 per month). (Exhibit A, page 7).
6. Assistance with meal preparation was authorized for 50 minutes per day, 7 days per week (25:05 per month). (Exhibit A, page 7).
7. Assistance with range of motion was authorized for 1 hour a day, 5 days per week (21:30 per month). (Exhibit A, page 7).
8. On January 14, 2016, the Department completed a home visit and reassessment. (Decision and Order in Docket No. 16-004877 HHS).
9. Following that visit, the ASW determined that Petitioner lived with other adults in a shared household and it decided to prorate Petitioner's assistance with Instrumental Activities of Daily Living (IADLs) by one-half pursuant to policy. (Exhibit A, page 17).
10. She then implemented a reduction to [REDACTED] per month as of March 1, 2016. (Decision and Order in Docket No. 16-004877 HHS).
11. However, the Department failed to send any written notice prior to taking the action. (Exhibit A, page 17).

12. On April 11, 2016, Petitioner called in to complain about the reduction. (Exhibit A, page 17).
13. On April 18, 2016, the ASW sent Petitioner written notice that her services were being reduced to ██████████ per month due to the proration policy as Petitioner's residence is a shared household. (Decision and Order in Docket No. 16-004877 HHS).
14. On April 22, 2016, the Michigan Administrative Hearing System (MAHS) received a request for hearing filed by Petitioner with respect to that reduction. (Decision and Order in Docket No. 16-004877 HHS).
15. The case was assigned Docket No. 16-004877 HHS. (Decision and Order in Docket No. 16-004877 HHS).
16. On April 29, 2016, the Adult Services Supervisor advised the ASW to put the payments back on as the notice was incorrectly sent after the negative action took place. (Exhibit A, page 17).
17. The ASW retroactively corrected the payment amount for March of 2016. (Exhibit A, page 21).
18. She also set payment for April 1, 2016 and ongoing at the old level as well. (Exhibit A, page 21).
19. On May 31, 2016, a hearing in Docket No. 16-004877 HHS was held with Administrative Law Judge (ALJ) Janice Spodarek. (Decision and Order in Docket No. 16-004877 HHS).
20. On June 3, 2016, ALJ Spodarek issued a Decision and Order affirming the reduction. (Decision and Order in Docket No. 16-004877 HHS).
21. Petitioner's HHS were then reduced to ██████████ per month, effective June 1, 2016, following that decision. (Exhibit A, page 21).
22. On August 16, 2016, the ASW completed a home visit and reassessment with Petitioner in Petitioner's home. (Exhibit A, pages 15-16).
23. During that assessment, they discussed the task of eating and Petitioner reported that no one feeds her and she could feed herself. (Exhibit A, page 15; Testimony of Petitioner; Testimony of ASW).
24. The ASW did not ask any further questions about eating. (Testimony of Petitioner; Testimony of ASW).
25. She did advise Petitioner that eating would be removed as a paid task. (Exhibit A, page 15).

26. While she decided to remove eating as a paid task, the ASW kept Petitioner's ranking in eating as a "3". (Exhibit A, page 19; Testimony of ASW).
27. She also initially testified that Petitioner is a "3" in eating, but later said that it was a mistake to rank Petitioner a "3" throughout the course of this case. (Testimony of ASW).
28. On August 17, 2016, the Department sent Petitioner written notice that, effective August 31, 2016, her HHS would be reduced to [REDACTED] per month. (Exhibit A, page 5).
29. The only change made at that time was the removal of eating assistance. (Testimony of ASW).
30. Overall, Petitioner's HHS was approved in the amount of 97 hours and 36 minutes per month for assistance with bathing, grooming, dressing, toileting, taking medications, housework, laundry, shopping, meal preparation, specialized skin care, and range of motion. (Exhibit A, page 20).
31. On August 23, 2016, the Michigan Administrative Hearing System (MAHS) received the request for hearing filed by Petitioner in this matter. (Exhibit A, pages 4-11).
32. On November 4, 2016, the ASW, along with a co-worker, completed another home visit and reassessment with Petitioner. (Exhibit B, pages 2-3).
33. Petitioner's home help provider and representative were also present. (Exhibit B, page 2).
34. Following that home visit, the ASW completed a case conference with her supervisor and the supervisor advised her to add assistance with mobility, transferring, and eating. (Exhibit B, page 3).
35. The notes provide that eating was added because Petitioner needs help cutting food. (Exhibit B, page 3).
36. Subsequently, Petitioner was approved for 110 hours and 8 minutes per month of HHS, with a total monthly care cost of [REDACTED]. (Exhibit B, page 6).
37. Assistance was authorized with bathing, grooming, dressing, toileting, transferring, eating, mobility, taking medications, housework, laundry, shopping, meal preparation, specialized skin care, and range of motion. (Exhibit B, page 6).

38. Specifically, assistance with eating was approved at 5 minutes per day, 7 days per week (2:30 per month). (Exhibit B, page 6).
39. The action was to be effective November 1, 2016. (Exhibit B, page 7).

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 statutes, 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 101 (8-1-2016) (hereinafter "ASM 101") and Adult Services Manual 120 (8-1-2016) (hereinafter "ASM 120") addresses the issues of what services are included in HHS and how such services are assessed. For example, ASM 101 provides in part:

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.

Personal care services which are eligible for Title XIX funding are limited to:

Activities of Daily Living (ADL)

- Eating.
- Toileting.
- Bathing.
- Grooming.
- Dressing.
- Transferring.
- Mobility.

Instrumental Activities of Daily Living (IADL)

- Taking medication.
- Meal preparation/cleanup.
- Shopping for food and other necessities of daily living.
- Laundry.
- Light housecleaning.

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 [sic] 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 would include such items as walkers, wheelchairs, canes, reachers, lift chairs, bath benches, grab bars and handheld showers.

* * *

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.

Moreover, ASM 120 states in part:

Functional Assessment

The **Functional Assessment** module of the **ASCAP** comprehensive assessment is the basis for service planning and for the HHS 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 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. Ms. Smith would be eligible to receive assistance with IADL's [sic] 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.

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.

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 suggested 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.

ASM 120, pages 2-7

Regarding specific activities, Adult Services Manual 121 (5-1-2013) (hereinafter "ASM 121"), pages 1 and 5 of 6, also provides in part:

Eating - helping with the use of utensils, cup/glass, getting food/drink to mouth, cutting up/manipulating food on plate, swallowing foods and liquids, cleaning face and hands after a meal.

- 1 No assistance required.
- 2 Verbal assistance or prompting required. Client must be prompted or reminded to eat.
- 3 Minimal hands-on assistance or assistive technology needed. Help with cutting up food or pushing food within reach; help with applying assistive devices. The constant presence of another person is not required.
- 4 Moderate hands-on assistance required. Client has some ability to feed self but is unable to hold utensils, cup, glass and requires the constant presence of another person while eating.
- 5 Totally dependent on others in all areas of eating.

* * *

Meal Preparation - Planning menus. Washing, peeling, slicing, opening packages/cans, mixing ingredients, lifting pots/pans, reheating food, cooking, safely operating stove, setting the table, serving the meal. Washing/drying dishes and putting them away.

- 1 No assistance required.
- 2 Verbal direction, prompting or reminding is required for menu planning, meal preparation or clean up.

- 3 Minimal hands-on assistance required for some meals. Client is able to reheat food prepared by another and/or prepare simple meals/snacks.
- 4 Requires another person to prepare most meals and do clean-up.
- 5 Totally dependent on another for meal preparation.

Here, the Department decided to reduce Petitioner's HHS by removing assistance with the task of eating. Prior to the reduction, Petitioner was ranked a "3" in eating and was authorized for 10 minutes per day, 6 days per week (4:18 per month) of assistance with the task.

In support of that decision, the ASW testified that the only action taken was the removal of eating and that it was done based on Petitioner's reports that she can feed herself. The ASW also testified that she did not ask any further questions about eating, but that she did notice Petitioner using her hands when drinking and utilizing the computer, telephone or remote control. The ASW further testified that she is not aware of whether Petitioner has spasms in her hands and did not ask how Petitioner feeds herself. With respect to Petitioner's ranking in eating, the ASW testified that Petitioner has been ranked a "3" in eating, even during times when eating was removed, but also testified later that such a ranking may have been a mistake. Since the reduction at issue in this case, the ASW has added assistance with eating back on, in addition to adding mobility and transferring assistance, but she also testified that she added less time for eating than before given Petitioner's reported needs.

In response, Petitioner testified that she gets spasms in her hands and always needs help, such as cooking food, preparing the table, opening things and removing trash, in order to eat. She also testified that she sometimes has trouble using silverware and needs someone to cut up her food and put it within reach. She further testified later that she can never cut her own food. According to Petitioner, she reported that she could feed herself during the home visit after the ASW asked if she was spoon-fed and that no follow up questions were asked about eating. She also testified that she can understand questions asked to her, but that the ASW's were ambiguous.

Petitioner bears the burden of proving by a preponderance of the evidence that the Department erred in reducing her for HHS.

Given the evidence and applicable policies in this case, Petitioner has failed to meet her burden of proof and the Department's decision must therefore be affirmed.

It is undisputed that Petitioner reported during the assessment that she could feed herself and, based on that report, the removal of assistance with eating was proper. Moreover, while the ASW did not ask any follow up questions and Petitioner is

understandably unfamiliar with the definition for eating assistance found in the above policy, there does not appear to have been any indication that Petitioner did not understand the question during the assessment. Petitioner did appear to confuse eating assistance with meal preparation assistance in her testimony during the hearing, but any similar confusion during the assessment would not have lead Petitioner to report that she can feed herself and Petitioner would have instead reported, as she did during the hearing, that her provider assists her by cooking, preparing the table, getting things for Petitioner, and cutting her food.

Additionally, while Petitioner's ranking may not have been changed and the ASW testified at one point that Petitioner always met the criteria for being ranked a "3" on the functional scale, which would warrant HHS for assistance with eating, that continuous ranking of "3" appears to have just been an oversight as the ASW clearly found in August of 2016 both that Petitioner did not need any assistance at all, which would warrant a ranking of "1", and that she did not meet the criteria for assistance with eating.

Similarly, while the Department subsequently reapproved assistance with eating after the request for hearing was filed in this matter and Petitioner was again assessed, the reduction in this case was based on the information available at the time and additional information provided during a subsequent assessment does not change the validity of the reduction at issue here.

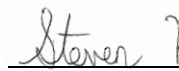
DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly reduced Petitioner's HHS.

IT IS, THEREFORE, ORDERED that:

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

SK/tm



Steven Kibit

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 Department Rep.

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