



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: March 28, 2017
MAHS Docket No.: 17-000043
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Marya Nelson-Davis

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 November 17, 2016. [REDACTED], Petitioner, appeared on his own behalf. [REDACTED], caregiver, appeared as a witness for Petitioner. [REDACTED], Appeals Review Officer, represented the Department of Health and Human Services (Department). [REDACTED], Adult Services Worker (ASW), appeared as a witness for the Department.

During the hearing proceeding, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-43.

ISSUE

Did the Department properly assess 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 [REDACTED] year-old Medicaid beneficiary who was diagnosed with a bipolar disorder, blisters under feet, carpal tunnel syndrome, chronic obstructive pulmonary disease, diabetes, high cholesterol, hypertension, neuropathy, and sleep apnea. (Exhibit A, p. 8)
2. After applying for HHS, Petitioner submitted a Medical Needs form, DHS-54A, on which Petitioner's medical doctor certified that Petitioner needs assistance with

dressing, taking medications, meal preparation, shopping, laundry, and housework. (Exhibit A, p. 15)

3. On October 3, 2016, a home visit was conducted with Petitioner and his provider; and the Adult Services worker (ASW) noted the following pertinent findings: “The applicant medication will be listed in the services plan. The applicant’s chronic pain and unsteady gait hinder him from bathing (in & out tub), completing housework, laundry, meal preparation and shopping for food/meds independently.” (Exhibit A, p. 9)
4. The ASW assessed Petitioner and gave him a ranking of 3 for grooming, bathing, housework, laundry, shopping for food/meds, and meal preparation. (Exhibit A, p. 8)
5. The ASW approved Petitioner for 24 hours and 43 minutes of HHS per month for a total care cost of \$ [REDACTED] for assistance with: bathing, housework, laundry, shopping, and meal preparation. (Exhibit A, p. 14)
6. On November 21, 2016, a Services and Payment Approval Notice was issued to Petitioner stating HHS was approved for 24 hours and 43 minutes per month. (Exhibit A, pp. 5 & 6)
7. On January 5, 2017, Petitioner’s hearing request, protesting his HHS payment amount, was received by the Michigan Administrative Hearing System.

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,
August 1, 2016, 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

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 ranked 3 or higher or a complex care need 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.

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.

Adult Services Manual (ASM) 120,
August 1, 2016, pp. 1-5 of 7

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,
August 1, 2016, p. 5 of 5.

In this case, Petitioner requested a hearing to protest the amount of HHS payment that he is receiving. Petitioner testified that he is paying his provider for more services than his is receiving payment for.

This Administrative Law Judge finds that Petitioner failed to prove, by a preponderance of the evidence, that he requires more HHS than he was approved for. The Department provided the necessary evidence to establish that at the time of the Petitioner's HHS assessment, the HHS worker properly calculated Petitioner's HHS amount, including the time and ranking for all of the ADLs and IADLs that Petitioner needs assistance with, based on her interview with Petitioner, her observation of Petitioner's abilities, and the information provided by Petitioner during the assessment. The Worker stated that with regard to grooming, Petitioner was given a ranking of 3 because he needs assistance with haircuts. The worker testified that the provider is not receiving a payment for this service because Petitioner's barber is the one who cuts and grooms Petitioner's hair, not Petitioner's HHS provider. Additionally, although Petitioner's doctor did certify a need for assistance with Petitioner's ability to dress himself, the worker testified that Petitioner told her during the HHS home assessment that he is able to do this activity independently, which resulted in Petitioner being given a ranking of 1 for this activity.

The Department established that the ASW followed policy and used the reasonable time schedule as a guide in determining the time that would be allocated for each task given a ranking of 3. Although Petitioner does have a combination of medical problems or a severe physical impairment, the evidence on the record fails to establish that Petitioner has special needs that require a deviation from the reasonable time schedule set forth in Department policy. Additionally, Petitioner failed to establish that he has functional limitations so severe that his care cost cannot be met safely within the monthly HHS payment determined by the HHS worker. Further, the applicable policy states clearly that the ASW is responsible for determining the necessity and level of need for HHS. Although the client's physician must certify that the client's need for services is related to an existing medical condition, the physician does not prescribe or authorize personal care services. If Petitioner's circumstances change, he can request a reassessment of her HHS eligibility.

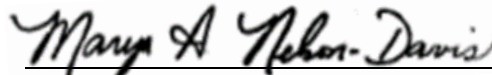
DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly assessed Petitioner's HHS case based on the information available at that time.

IT IS, THEREFORE, ORDERED that:

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

MN-D/bb



Marya A. Nelson-Davis
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.

[REDACTED]

DHHS -Dept Contact

[REDACTED]

DHHS-Location Contact

[REDACTED]

Agency Representative

[REDACTED]

Petitioner

[REDACTED]