



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: April 28, 2017
MAHS Docket No.: 17-001297
Agency No.: [REDACTED]
Petitioner: [REDACTED]

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.

After due notice, a telephone hearing was held on March 23, 2017. Petitioner appeared and testified on his own behalf. [REDACTED] a representative from the agency that provides Petitioner's services, also testified as a witness for Petitioner. [REDACTED], Appeals Review Officer, represented the Respondent Department of Health and Human Services. [REDACTED], Adult Services Supervisor, and [REDACTED], Adult Services Specialist, 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-three-year-old Medicaid beneficiary who has been diagnosed with hypertension, osteoarthritis, anemia, coronary artery disease, kidney disease, and bilateral hip pain. (Exhibit A, page 8).
2. Since June of 1995, Petitioner has been receiving HHS through the Department. (Exhibit A, page 5).
3. As of November 1, 2016, Petitioner was approved for 107 hours and 47 minutes of HHS per month, with a total monthly care cost of [REDACTED]. (Exhibit A, page 19).

4. Specifically, Petitioner was approved for assistance with the tasks of eating, mobility, toileting, transferring, bathing, grooming, dressing, taking medications, housework, laundry, shopping, and meal preparation. (Exhibit A, pages 17-19).
5. Assistance with eating was authorized for 50 minutes per day, 7 days per week (25:05 per month). (Exhibit A, page 17).
6. Assistance with toileting was authorized for 26 minutes per day, 3 days per week (5:35 per month). (Exhibit A, page 18).
7. Assistance with grooming was authorized for 10 minutes per day, 7 days per week (5:01 per month). (Exhibit A, page 19).
8. Assistance with housework was authorized for 1 hour and 24 minutes per day, 1 day per week (6:01 per month). (Exhibit A, page 17).
9. Assistance with laundry was authorized for 1 hour and 30 minutes per day, 1 day per week (6:27 per month). (Exhibit A, page 17).
10. Assistance with shopping was authorized for 1 hour and 10 minutes per day, 1 day per week (1:10 per month). (Exhibit A, page 17).
11. On November 2, 2016, the Adult Services Specialist completed a home visit and reassessment with Petitioner and his provider in Petitioner's home. (Exhibit A, page 13).
12. During that assessment, Petitioner reported that he can use the bathroom on his own; the only assistance with grooming he needs is assistance with shaving twice a week; and that, while Petitioner can eat by himself, he needs assistance in cutting up his food. (Exhibit A, page 13; Testimony of Adult Services Specialist).
13. Based on those reports, the Adult Services Specialist determined that assistance with toileting should be removed; assistance with grooming should be reduced to two days per week; and assistance with eating should be reduced in the number of minutes authorized per day. (Exhibit A, page 13; Testimony of Adult Services Specialist).
14. She also noted that Petitioner's assistance with shopping should be increased to two days per week, but did not identify a reason for the increase in her narrative regarding the home visit or during her testimony during the hearing. (Exhibit A, page 13; Testimony of Adult Services Specialist).
15. Assistance with all other tasks was to remain the same, but the Adult Services Specialist also determined that a previous worker had not

removed calculations for tasks that were made by the Department's previous computer system; Petitioner's previous assistance should have only been authorized at an amount of [REDACTED] per month; and that she should remove the old calculations so that only the ratings for time and task in the new computer system would be shown. (Exhibit A, pages 13, 16, Testimony of Adult Services Specialist).

16. On November 2, 2016, the ASW sent Petitioner written notice that, effective November 18, 2016, his HHS would be reduced to \$ [REDACTED] per month. (Exhibit A, pages 9-12).
17. The notice also stated that toileting assistance was being removed based on Petitioner's statement that he could complete that task on his own; shopping was being increased to two days per week; grooming was being reduced to two days per week based on Petitioner's report; and assistance with eating was being reduced because Petitioner only requires assistance with cutting up his food. (Exhibit A, page 10).
18. On November 18, 2016, Petitioner's HHS were reduced to 67 hours and 26 minutes per month, with a total monthly care cost of \$ [REDACTED] per month. (Exhibit A, page 21).
19. While Petitioner's assistance with shopping was increased to 10 minutes per day, 2 days per week (1:26 per month), his HHS was reduced overall with the removal of assistance with toileting and the reductions to his assistance with grooming, to 10 minutes per day, 2 days per week (1:26 per month); eating, to 5 minutes per day, 7 days per week (2:30 per month); housework, to 12 minutes per day, 1 day per week (0:52 per month); laundry, to 14 minutes per day, 1 day per week (1:00 per month); and shopping, to 10 minutes per day (1:26 per month). (Exhibit A, page 20).
20. On February 7, 2017, the Michigan Administrative Hearing System (MAHS) received the request for hearing filed by Petitioner in this matter. (Exhibit A, page 4).

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") address 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.

ASM 101, pages 1-3, 5

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

Here, the Department reduced Petitioner's HHS from 107 hours and 47 minutes per month, with a total monthly care cost of [REDACTED] to 67 hours and 26 minutes per month, with a total monthly care cost of [REDACTED] [REDACTED] with grooming, eating, housework, and laundry.

In support of that decision, the Adult Services Specialist testified that the removal of assistance with toileting and the reduction in assistance with eating and grooming were based on Petitioner's reports that he can use the bathroom on his own; that the only assistance with grooming he needs is help with shaving twice a week; and that the only assistance with eating he needs is help cutting up his food. She also agreed that Petitioner's needs in other areas had not changed, but that she had to adjust his HHS by removing calculations made under the Department's previous computer system that a previous worker had not removed and that, with the correction, Petitioner received

less time for assistance with certain tasks based on the Reasonable Time Schedule (RTS) used by the Department.

In response, Petitioner testified that he did not understand the reduction given his unchanged needs and his unchanged medical conditions. He also testified that, while he does not remember what was reported during the home visit, he needs assistance with toileting every day. He also testified that this reduction was the second cut in his services since he went from an individual provider to an agency provider. Petitioner further took issue with the amount of HHS that the Department reported that he was receiving, but it was later clarified that Petitioner was referring to the amount his worker is paid by the provider agency Petitioner uses, which the Department has no control over, and not the amount of HHS authorized or the amount the Department pays to the provider agency.

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

Given the evidence and applicable policies in this case, Petitioner has met burden of proof and the Department's decision must therefore be reversed. Regardless of whether the reductions in assistance with toileting, grooming or eating were proper based on Petitioner's statements during the home visit, the Department went far beyond that and also significantly reduced Petitioner's assistance with housework and laundry without any basis. It is undisputed that Petitioner's needs in those areas are unchanged and, instead, the Department's witness testified that the change in assistance for those tasks was the result of her removing old calculations from the Department's previous computer system that were still part of Petitioner's time and task. However, no notice of any reduction in those tasks was identified in the Advance Negative Action Notice sent to Petitioner and the Adult Services Specialist could not explain how the removal of old calculations resulted in so much less time per day being authorized for assistance with housework and laundry. The Adult Services Specialist's statement that she simply used the RTS for those tasks is insufficient to support the reduction given the size of the reduction and the fact that Petitioner's rankings and needs in those areas were unchanged, and, based on the record in this case, the Department's action was therefore improper.

DECISION AND ORDER

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

IT IS, THEREFORE, ORDERED that:

The Department's decision is **REVERSED** and it must initiate a reassessment of Petitioner's HHS in accordance with Department policy.



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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DHHS -Dept Contact

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