



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR



Date Mailed: March 3, 2020
MOAHR Docket No.: 19-012487
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Colleen Lack

DECISION AND ORDER

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 *et seq*; 42 CFR 438.400 *et seq*; and Mich Admin Code, R 792.11002.

After due notice, a hearing was held on January 23, 2020. [REDACTED] the Petitioner, appeared on her own behalf. [REDACTED] Individual Caregiver; [REDACTED] Shipp, Owner, H&H Home Health Care, Inc. (H&H); and [REDACTED] Agency Caregiver, appeared as witnesses for Petitioner. Theresa Root, Appeals Review Officer (ARO), represented the Department of Health and Human Services (Department). Karen Madison, Adult Services Worker (ASW), and Redonda Williams, Adult Services Supervisor, appeared as witnesses for the Department.

During the hearing proceeding, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-18. The Department's Addendum packet was subsequently admitted as Exhibit B, pp. 1-10.

ISSUES

Did the Department properly determine the payment rate for Petitioner's caregivers as she changed from having an individual caregiver to an agency caregiver?

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 has had an open HHS case from a May 4, 2017, referral. (Exhibit A, p. 13)

2. On September 23, 2019, Dr. Qazi completed a DHS-54A Medical Needs form. The listed diagnoses appear to be Multiple Sclerosis, L4L5 radiculopathy, knee osteoarthritis, and hypertension. In field I, the medical provider certified that Petitioner had a medical need for assistance with listed personal care activities. (Exhibit A, p. 7)
3. On October 8, 2019, the ASW completed a home visit for a review of the HHS case. Petitioner's functional abilities and needs for assistance with the Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADLs) included in the HHS program were discussed. Petitioner also reported that her Individual Caregiver continued to assist her and she was signing up with a provider agency, H&H, as her new HHS provider. (Exhibit A, p. 12; Exhibit B, pp. 1-7; ASW Testimony)
4. Petitioner's adult son lives in the home, he is disabled. (Petitioner Testimony)
5. On October 9, 2019, the ASW completed a face to face interview with Petitioner's Individual Caregiver. (Exhibit A, p. 12)
6. On October 9, 2019, the ASW completed a face to face contact with a representative of H&H. Petitioner's Individual Caregiver was going to continue as Petitioner's caregiver through the agency. (Exhibit A, p. 11)
7. On October 21, 2019, Petitioner's Individual Caregiver signed with H&H. (Exhibit A, p. 11)
8. A recent policy change states that an agency caregiver may not provide services to a Home Help client who they were assisting as an individual caregiver for 90 days after commencement of employment with the agency or for 90 days after termination of services as the client's individual caregiver, whichever comes later. (Exhibit A, p. 18)
9. On October 24, 2019, the ASW noted that she was unable to update Petitioner's HHS payment to the new provider H&H, with the formerly Individual Caregiver as an agency caregiver based on the policy prohibiting a caregiver from signing up with an agency with the same HHS client for at least 90 days. Petitioner signed with the agency on October 9, 2019, and her Individual Caregiver signed with the agency on October 21, 2019. (Exhibit A, p. 10)
10. On November 5, 2019, the ASW spoke with Petitioner regarding the new caregiver working for her through H&H. (Exhibit A, p. 10)
11. On November 7, 2019, the ASW was able to update Petitioner's HHS payment to H&H as an agency provider with the Agency Caregiver, who had associated with the agency effective October 1, 2019. (Exhibit A, p. 9)
12. Comparison of the Time and Task authorizations indicates the HHS hours for bathing, dressing, grooming, housework, meal preparation, and travel for

shopping remained unchanged; the HHS hours for laundry and shopping increased. (Exhibit B, pp. 8-9)

13. On November 7, 2019, a DHS-1210 Service Approval Notice was issued to Petitioner stating the HHS authorization would be increased to \$457.50 per month effective October 9, 2019. It was noted that H&H is Petitioner's new HHS provider. The Agency Caregiver would actually be providing services to Petitioner and has been identified as being associated with the agency. (Exhibit A, p. 8)
14. On November 20, 2019, Dr. Qazi completed another DHS-54A Medical Needs form. The listed diagnoses appear to include Multiple Sclerosis exacerbation, L4L5 radiculopathy, hypertension, gastroesophageal reflux disease, umbilical hernia, osteoarthritis, and chronic obstructive pulmonary disease. In field I, the medical provider certified that Petitioner had a medical need for assistance with listed personal care activities. However, this medical certification was not available at the time of the November 7, 2019, determination. (Attachment to Hearing Request)
15. The Michigan Office of Administrative Hearings and Rules (MOAHR) initially received a copy of Petitioner's Request for Hearing by fax from the local DHHS office by on December 4, 2019. (Exhibit A, pp. 4-7)
16. On December 13, 2019, MOAHR received another copy of the Request for Hearing by mail from Petitioner. (Hearing Request)

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 home help 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 worker.**

Home help 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) ranked 3 or higher or 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 bath himself without the hands-on assistance of another. The adult services worker 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. This list is not all inclusive.

Complex Care

Complex care refers to conditions requiring intervention with special techniques and/or knowledge. These complex care tasks are performed on clients 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 or feeding assistance.
- Catheters or leg bags.
- Colostomy care.
- Bowel program.
- Suctioning.
- Specialized skin care.

- Range of motion exercises.
- Dialysis (In-home).
- Wound care.
- Respiratory treatment.
- Ventilators.
- Injections.

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,
April 1, 2018, pp. 1-5 of 5
(Underline added by ALJ)

Adult Services Manual (ASM) 115, addresses the adult services requirements, including the DHS-54A Medical Needs form:

MEDICAL NEEDS FORM (DHS-54A)

The DHS-54A, Medical Needs, form must be signed and dated by a medical professional certifying a medical need for personal care services. The medical professional must be an enrolled Medicaid provider and hold one of the following professional licenses:

- Physician (M.D. or D.O.).
- Physician assistant.
- Nurse practitioner.
- Occupational therapist.
- Physical therapist.

The medical needs form is only required for home help clients at the initial opening of a case, unless one of the following exists:

- The ASW assesses a decline in the client's health which significantly increases their need for services.
- The ASW assesses an improvement in the client's ability for self-care, resulting in a decrease or elimination of services and the client states their care needs have not changed.
- The current medical needs form has a specified time frame for needed services and that time frame has elapsed.

At each case review the ASW must document in the general narrative if a medical needs form is or is not needed.

The client is responsible for obtaining the medical certification of need but the form must be completed by the medical professional and **not** the client. The National Provider Identifier (NPI) number must be entered on the form

by the medical provider and the medical professional must indicate whether they are a Medicaid enrolled provider.

The medical professional certifies that the client's need for service is related to an existing medical condition. **The medical professional does not prescribe or authorize personal care services.** Needed services are determined by the comprehensive assessment conducted by the Adult Services Worker.

Adult Services Manual (ASM) 115,
January 1, 2018, pp. 1-2 of 5
(Underline added by ALJ)

Adult Services Manual (ASM) 120, addresses the adult services comprehensive assessment:

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.

Note: If there are worker safety issues related to meeting the client in the home, a policy exception may be requested from the Home Help Policy program office to conduct the visit at another setting.

- 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.
- 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 Abilities Tab

The **Functional** Tab under **Assessment** module in MiAIMS is the basis for service planning and for the Home Help services payment.

Document the client's abilities and needs in the functional abilities tab 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 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 tab under 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 worker (ASW) must rank Mr. Jones a 3 or greater under the functional abilities tab. Mr. Jones would be eligible to receive Home Help services.

Assistive technology includes such items as walkers, wheelchairs, canes, reaches, 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 Assessment MDHHS 5535 from MiAIMS forms for assistance with activity ranking, frequency, and length of time needed.

Time and Task

The ASW will allocate time for each task assessed a rank of 3 or greater, based on interviews with the client and caregiver, observation of the client's abilities and use of the reasonable time schedule (RTS) as a **guide**. The RTS is built into the functional assessment tab within MiAIMS for each task. ASW's should modify how much time is needed based on clients' documented need.

MiAIMS includes a client centered time and task based on the assessment of client's needs. MiAIMS also has a provider time and task based on client choice of activities to be performed by their chosen provider. Client time and task may be different from provider time and task due to client choice. Client time and task offers the maximum approved time based on the client's assessed need. Provider time and task can have the same hours or less depending on client request, multiple providers, or flexibility of schedules.

Note: This allows flexibility for client choice while also assuring the basic needs are being met. Caregiver must correctly document what tasks they are performing and will only be paid for tasks that are approved on the authorized time and task.

Example: Miss Smith has been assessed to need bathing assistance. However, she does not want her caregiver or agency provider to assist her with bathing. Miss Smith continues to do bathing on her own with difficulty. Miss Smith's time and task will have bathing allocated, but bathing will not be in her provider's time and task.

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 ASW must assess each task according to the average time and frequency required for its completion.**

Example: A client needs assistance with cutting up food. The ASW would only pay for the time required to cut the food and not the full amount of time suggested under the RTS for eating.

Example: On a good day, it takes the caregiver or agency provider 10 minutes to dress Miss Jones. On a bad day, when Miss Jones is in a lot of pain, it can take the caregiver or agency provider 20 minutes to assist Miss Jones with dressing. The average daily time needed is 15 minutes. Therefore 15 minutes is what is entered in the time and task.

Example: Sally is assessed needing an average of 20 minutes a day for bathing and reports frequency of 4 days a week. However, one day during the week, Sally was not feeling well and decided to skip her bath. The next day the caregiver assisted Sally with bathing in the morning and in the evening due to illness. Both bathing activities totaled 20 minutes each. The frequency shows the caregiver only completed three days of bathing due to documentation restrictions. However, the caregiver assisted in four bathing occurrences during that week with one day having completed two baths.

Note: It is important to understand that each day a client may have different needs due to their health restrictions. Therefore, average time and frequency may vary due to changes in client's needs.

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.

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 contact module on MiAIMS.

Example: Mrs. Smith needs Home Help services. Her spouse is employed and is out of the home Monday thru Friday from 7a.m. to 7p.m. The ASW would not approve hours for shopping, laundry or house cleaning as Mr. Smith is responsible for these tasks.

Adult Services Manual (ASM) 120,
February 1, 2019, pp. 1-7 of 8
(Underline added by ALJ)

Adult Services Manual (ASM) 015 addresses the DHS-54A Medical Needs form:

MEDICAL NEEDS FORM (DHS-54A)

The DHS-54A, Medical Needs, form is required for **all** clients receiving Medicaid personal care services. The DHS-54A must be signed and dated by a medical professional certifying a medical need for personal care services. The medical professional must be an existing enrolled Medicaid provider and hold one of the following professional licenses:

- Physical (M.D. or D.O).
- Nurse practitioner.
- Occupational therapist
- Physical therapist.
- Physician assistant (PA).

The client or their representative is responsible for obtaining the medical certification of need, but the form must be completed by the medical professional and not the client. The National Provider Identifier (NPI) number must be entered on the form by the medical provider and the medical professional must indicate whether they are a Medicaid enrolled provider.

The medical professional certifies that the client's need for service is related to an existing medical condition. **The medical professional does not prescribe or authorize the actual personal care services.** The list of available services on the form is there for medical reference only.

Adult Services Manual (ASM) 015,
January 1, 2018, pp. 1-2 of 2

(Underline added by ALJ)

Adult Services Manual (ASM) 136 addresses HHS agency providers:

Recruitment and Marketing

Recruitment of caregivers or clients is not allowed in MDHHS offices or anywhere on MDHHS premises. Home Help agencies may not use materials developed by MDHHS in advertising, marketing, or recruitment in a manner that misrepresents the Home Help agency's relationship with the state or the Home Help program. The use of the MDHHS logo on agency documents is prohibited. Agencies are not allowed to recruit or direct their advertising to Medicaid beneficiaries and/or their active individual caretakers who are already receiving Home Help services through MDHHS. An agency caregiver may not provide services to a Home Help client who they were assisting as an individual caregiver for 90 days after commencement of employment with the agency or for 90 days after termination of services as the client's individual caregiver, whichever comes later.

Example: Mrs. Smith is a Home Help client. She uses her adult daughter, Becky, as her individual Home Help caregiver. Becky recently had contact with a Home Help agency and would like to work for the agency. Her start date is May 1st. Becky may work for the agency and care for other clients as of May 1st. She may also continue as an individual caregiver for her mother, Mrs. Smith. If the agency wants to take Mrs. Smith as a client, they can assign a different agency caregiver for her care. Becky will not be able to care for Mrs. Smith through the agency until there is at least a 90-day break in service. Therefore, in this case, if Mrs. Smith began with the agency on May 1st, her daughter, Becky could not be her agency caregiver until July 30th which would be 90 days.

Adult Services Manual (ASM) 136,
October 1, 2019, p. 5 of 14
(Underline added by ALJ)

On October 8, 2019, the ASW completed a home visit for a review of the HHS case. Petitioner's functional abilities and needs for assistance with the ADLs and IADLs included in the HHS program were discussed. The ASW testified that Petitioner did not indicate that the HHS hours she had been authorized were insufficient. The ASW noted that the HHS hours for the IADLs had to be pro-rated based on the shared household as Petitioner's son lives in the home. There were no indications that any IADLs were

completed separately for Petitioner. Petitioner also reported that her Individual Caregiver continued to assist her and she was signing up with a provider agency, H&H, as her new HHS provider. (Exhibit A, p. 12; Exhibit B, pp. 1-7; ASW Testimony)

On October 9, 2019, the ASW completed a face to face interview with Petitioner's Individual Caregiver. (Exhibit A, p. 12) On October 9, 2019, the ASW completed a face to face contact with a representative of H&H. Petitioner's Individual Caregiver was going to continue as Petitioner's caregiver through the agency. (Exhibit A, p. 11) On October 21, 2019, Petitioner's Individual Caregiver signed with H&H. (Exhibit A, p. 11)

The October 1, 2019, change to ASM 136 policy states that an agency caregiver may not provide services to a Home Help client who they were assisting as an individual caregiver for 90 days after commencement of employment with the agency or for 90 days after termination of services as the client's individual caregiver, whichever comes later. (Exhibit A, p. 18)

On October 24, 2019, the ASW noted that she was unable to update Petitioner's HHS payment to the new provider H&H, with the former Individual Caregiver working through the agency based on the policy prohibiting a caregiver from signing up with an agency with the same HHS client for at least 90 days. Petitioner signed with the agency on October 9, 2019, and her Individual Caregiver signed with the agency on October 21, 2019. (Exhibit A, p. 10)

On November 5, 2019, the ASW spoke with Petitioner regarding the new caregiver working for her through H&H. (Exhibit A, p. 10)

On November 7, 2019, the ASW was able to update Petitioner's HHS payment to H&H as an agency provider with the Agency Caregiver, who had associated with the agency effective October 1, 2019. (Exhibit A, p. 9)

On November 7, 2019, a DHS-1210 Service Approval Notice was issued to Petitioner stating the HHS authorization would be increased to \$457.50 per month effective October 9, 2019. It was noted that H&H is Petitioner's new HHS provider. The Agency Caregiver would actually be providing services to Petitioner and has been identified as being associated with the agency. (Exhibit A, p. 8)

The Department updated Petitioner's HHS payment with an effective date of October 9, 2019. This is the date Petitioner signed with the HHS provider agency. Therefore, the HHS payment could not have been updated to the agency rate any earlier. Further, the new caregiver through the agency was already associated with the agency by October 9, 2019. (Exhibit A, p. 10)

Petitioner also contested the amount of HHS hours she is authorized for. Comparison of the Time and Task authorizations indicates the HHS hours for bathing, dressing, grooming, housework, meal preparation, and travel for shopping remained unchanged; the HHS hours for laundry and shopping increased. (Exhibit B, pp. 8-9) It appears that the hours authorized for housework and meal preparation were already at one half of

the monthly maximum, as appropriate for a shared household. The HHS hours for laundry were increased to one half the monthly maximum and the HHS hours for shopping were increased to almost one half the monthly maximum. (Exhibit B, pp. 8-9)

The testimony of Petitioner and her Individual Caregiver indicated they believed the HHS caregiver would be paid for everything the medical provider marked on the DHS-54A Medical Needs form. (Petitioner and Individual Caregiver Testimony) However, the above cited ASM 015, ASM 101, and ASM 115 policies are clear that the medical professional does not prescribe or authorize personal care services. The list of available services on the form is for reference only. Needed services are determined by the comprehensive assessment conducted by the ASW.

Petitioner also raised issues with the ASW and her Supervisor and stated that she can no longer work with them. As discussed, the ALJ has no authority to change what ASW/Supervisor is assigned to an HHS case nor to review concerns with the ASW/Supervisor.

Petitioner testified that she has Multiple Sclerosis and needs assistance with bathing, dressing, and transportation. When asked if she told the ASW during the assessment about needing more hours, Petitioner stated that her Individual Caregiver talked with the ASW about needing more hours. (Petitioner Testimony) It is noted that the HHS authorization includes hours for bathing and dressing. Further, as indicated in the above cited ASM 101 policy, medical transportation is not included in the HHS program.

The Individual Caregiver testified that the ASW asked her what she assists Petitioner with. Therefore, it was asserted that the ASW was very well aware of everything she was doing for Petitioner. When asked what she told the ASW, the Individual Caregiver testified that she helps Petitioner with bathing, dressing, grooming, mobility at times, toileting, transferring, housework, laundry, travel for laundry when the washing machine was broken, meal preparation, making sure Petitioner gets her medication, and shopping. It was indicated that Petitioner has good days and bad days. However, the Individual Caregiver acknowledged that during the assessment she did not go over the details of the assistance she provides as thoroughly as she did in her testimony. (Individual Caregiver Testimony)

Several specific ADL activities contested by Petitioner and her Individual Caregiver, specifically mobility, toileting, and transfers. For mobility, Petitioner was noted to use a wheeled walker. (Exhibit A, p. 12) The ASW had understood that Petitioner was independent with transfers and toileting. The ASW had also observed Petitioner getting up independently during the assessment. The ASW went over toileting with Petitioner during the assessment. It was asserted that Petitioner did not report any needs with this ADL. (ASW Testimony) Petitioner testified that she has heel spurs, therefore, she has a problem getting out of bed, walking to the toilet, and all that. (Petitioner Testimony) However, it does not appear that heel spurs are included on the DHS-54A Medical Needs form that existed at the time of the November 7, 2019, determination. (Exhibit A, p. 7)

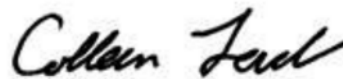
Overall, the available evidence supports that the Department properly determined the payment rate for Petitioner's caregivers as she changed from having an individual caregiver to an agency HHS provider; and properly assessed Petitioner's HHS case. The October 1, 2019, policy change prohibited Petitioner's Individual Caregiver from becoming her caregiver through an HHS Agency until at least 90 days had passed. Once a different agency caregiver was reported and verified, Petitioner's HHS payment was updated retroactive to the date Petitioner signed up with the HHS provider agency. Regarding the amount of HHS hours authorized, the evidence was not sufficient to establish that the HHS assessment, and resulting hours authorized, were not in accordance with Department policy. A medical provider marking specific activities on the DHS-54A Medical Needs form does not require that HHS hours be authorized for those activities. The HHS authorization is based on the ASW's assessment. The ASW spoke with Petitioner at her home, and the current caregiver in the office. The available evidence does not support that there was a clear request for an increase in the HHS hours with any ADL or IADL covered in the HHS program during the October 2019 assessment. The Individual Caregiver's testimony also indicated she did not discuss the assistance she was providing Petitioner as thoroughly during the assessment as she described in her testimony. The determination to leave the HHS hours for most activities the same, with some increases in IADL activities, appears to be appropriate based on the information available at the time of that assessment.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly determined the payment rate for Petitioner's caregivers as she changed from having an individual caregiver to an agency HHS provider; and properly assessed Petitioner's HHS case.

IT IS, THEREFORE, ORDERED that:

The Department's determinations are **AFFIRMED**.



CL/dh

Colleen Lack
Administrative Law Judge
for Robert Gordon, 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 Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30763
Lansing, Michigan 48909-8139

DHHS -Dept Contact

Michelle Martin
Capitol Commons
6th Floor
Lansing, MI 48909

DHHS-Location Contact

Sherry Reid
Oakman Adult Services
3040 W. Grand Blvd., Suite L450
Detroit, MI 48202

DHHS Department Rep.

M. Carrier
Appeals Section
PO Box 30807
Lansing, MI 48933

Petitioner

[REDACTED]
[REDACTED] MI [REDACTED]

Agency Representative

Theresa Root
222 N Washington Sq
Suite 100
Lansing, MI 48933