



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: February 6, 2020
MOAHR Docket No.: 19-013165
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Robert J. Meade

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 Petitioner's request for a hearing.

After due notice, a telephone hearing was held on February 6, 2020. Petitioner appeared and testified on her own behalf. [REDACTED] Petitioner's caregiver appeared as a witness for Petitioner.

Allison Pool, Appeals Review Officer, appeared on behalf of Respondent, Michigan Department of Health and Human Services (MDHHS or Department). Tameka Kelly, Adult Services Worker (ASW) and Anthony Clark, Adult Services Supervisor, appeared 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 [REDACTED]-year-old Medicaid beneficiary, born [REDACTED], who is diagnosed with compressed discs in her back, shoulder lesions, and pain in her right wrist. (Exhibit A, pp 9-10; Testimony)
2. On November 22, 2019, the ASW met Petitioner at her home to conduct a reassessment. Petitioner's caregiver was not available for the assessment, so the ASW told Petitioner that she would contact the caregiver by telephone. The ASW then reviewed Petitioner's Activities of Daily Living (ADL's) and Instrumental Activities of Daily Living (IADL's). The ASW observed Petitioner walking around without issues or the use of

adaptive equipment, getting on and off a very low couch without assistance, and bending down to straighten her rugs without assistance. (Exhibit A, p 8; Testimony)

3. On November 25, 2019, the ASW had a phone conversation with Petitioner's caregiver. The ASW asked the caregiver what she did for Petitioner and the caregiver responded that she still did everything that she had done before. When asked to say specifically what she did for Petitioner, the caregiver indicated that she did cooking, laundry, grocery shopping, hair, housework and running errands. The ASW asked the caregiver to confirm that this was all she did for Petitioner and the caregiver answered yes. (Exhibit A, p 8; Testimony)
4. Following the reassessment, Petitioner's HHS was reduced from \$398.41 per month to \$258.30 per month because the ASW removed time for bathing, dressing and medication. The ASW based her determination on her observations of Petitioner, Petitioner's answers to her questions during the reassessment, and the answers given by Petitioner's caregiver. (Exhibit A, pp 17-18; Testimony)
5. On December 5, 2019, the Department sent Petitioner an Advance Negative Action Notice indicating the reduction in HHS, effective December 19, 2019. (Exhibit A, p 6; Testimony)
6. On December 27, 2019, Petitioner's Request for Hearing was received by the Michigan Office of Administrative Hearings and Rules. (Exhibit 1)

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 statute, 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.

The Adult Services Manual (ASM) address the issues of what services are included in Home Help Services and how such services are assessed:

ASM 101 AVAILABLE SERVICES

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.

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 101
April 1, 2018, pp 1-2, 5
Emphasis added*

ASM 105 ELIGIBILITY CRITERIA

GENERAL

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 Program Enrollment Type (PET) 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 worker (ASW) is responsible for determining the necessity and level of need for home help services based on all of the following:

- Client choice.
- A completed MDHHS-5534, 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.

*Adult Services Manual 105
January 1, 2018, pp 1, 3
Emphasis added*

ASM 115 ADULT SERVICES REQUIREMENTS

COMPREHENSIVE ASSESSMENT (MDHHS-5534)

Conduct a face-to-face interview with the client in their home to assess the personal care needs. Complete the MDHHS-5534, Adult Services Comprehensive Assessment, which is generated from MiAIMS; see ASM 120, Adult Services Comprehensive Assessment.

CONTACTS

The ASW must, at a minimum, have a face-to-face interview with the client, prior to case opening, then every six months in the client's home, at review and redetermination.

*Adult Services Manual 115
January 1, 2018, p 3*

ASM 120 ADULT SERVICES COMPREHENSIVE ASSESSMENT

INTRODUCTION

The MDDHS-5534, Adult Services Comprehensive Assessment, is the primary tool for determining need for services. The comprehensive assessment must be completed on **all open home help services cases**. Michigan Adult Integrated Management System (MiAIMS), provides the format for the comprehensive assessment and all information must be entered on the computer program.

Functional Abilities Tab

The **Functional** Tab under **Assessment** module of 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 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.

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.

*Adult Services Manual 120
January 1, 2018, pp 1-8
Emphasis added*

The ASW testified that on November 22, 2019, she met Petitioner at her home to conduct a reassessment. The ASW indicated that Petitioner's caregiver was not available for the assessment, so she told Petitioner that she would contact the caregiver by telephone. The ASW testified that she then reviewed Petitioner's ADL's and IADL's. The ASW indicated that she observed Petitioner walking around without issues or the use of adaptive equipment, getting on and off a very low couch without assistance, and bending down to straighten her rugs without assistance.

The ASW testified that on November 25, 2019, she had a phone conversation with Petitioner's caregiver. The ASW indicated that she asked the caregiver what she did for Petitioner and the caregiver responded that she still did everything that she had done before. The ASW testified that when she asked the caregiver to say specifically what she did for Petitioner, the caregiver indicated that she did cooking, laundry, grocery shopping, hair, housework and running errands. The ASW testified that she then confirmed this with the caregiver.

The ASW testified that following the reassessment, she reduced Petitioner's HHS from \$398.41 per month to \$258.30 per month by removing time for bathing, dressing and medication, because Petitioner's caregiver did not indicate that she performed these tasks for Petitioner. The ASW testified that she based her determination on her observations of Petitioner, Petitioner's answers to her questions during the reassessment, and the answers given by Petitioner's caregiver. The ASW indicated that based on the reassessment, on December 5, 2019, she sent Petitioner an Advance Negative Action Notice indicating the reduction in HHS, effective December 19, 2019.

Petitioner testified that she was home when the ASW came for the reassessment, but that her caregiver was not. Petitioner indicated that she answered the ASW's questions honestly but did not know what happened during the phone call between the ASW and her caregiver until she received the reduction notice in the mail. Petitioner testified that she has no strength in her right hand and wrist and three bulging discs in her back that cause spasms down her leg. Petitioner indicated that she cannot bathe herself and cannot get in and out of the tub on her own. Petitioner testified that her caregiver helps her with whatever she needs.

Petitioner's caregiver testified that she was at work when the ASW called and was juggling three things at once. Petitioner's caregiver also indicated that she was trying to get off the phone as quick as possible because she did not want to get in trouble. Petitioner's caregiver testified that she told the ASW that she was still doing everything for Petitioner that she had done before. Petitioner's caregiver admitted that when the ASW asked her to be more specific, she did forget to mention bathing, dressing and medication.

Based on the evidence presented, Petitioner has failed to prove by a preponderance of the evidence that the Department erred in reducing her HHS. The ASW observed Petitioner moving freely around her home without any assistance and without the use of any assistive devices. Petitioner's caregiver informed the ASW that she assisted Petitioner with cooking, laundry, grocery shopping, hair, housework and running errands. Petitioner's caregiver did not really dispute what she told the ASW; she only indicated that she told the ASW that she did everything that she did before. However, if Petitioner's caregiver was really helping Petitioner with such intimate activities as bathing and dressing, it seems more likely than not that those tasks would have been the first ones Petitioner's caregiver remembered and relayed to the ASW. At any rate, the ASW can only base her decision on the information available to her at the time the decision is made. Based on that information, it was proper for the ASW to remove bathing, dressing and medication from Petitioner's HHS. The ASW testified in a credible manner about her observations of Petitioner and Petitioner's answers to her questions during the reassessment, as well as the answers given by Petitioner's caregiver. The ASW's conclusions are adequately supported by the record. As such, the Department's ASW properly calculated Petitioner's HHS based on policy.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.



RM/sb

Robert J. Meade
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
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Petitioner

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