



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: June 15, 2021
MOAHR Docket No.: 20-003110 & 20-004711
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 video Zoom hearing was held on June 9, 2021. Attorneys John Schwend and Simon Zagata, Disability Network, appeared on Petitioner's behalf. [REDACTED] Petitioner's daughter and caregiver, appeared as a witness for Petitioner. Emily Piggott, Appeals Review Officer, represented Respondent, Michigan Department of Health and Human Services (MDHHS or Department). Cara Dearmon, Adult Services Worker (ASW), appeared as a witness for the Department.

ISSUE

Did the Department properly authorize Petitioner's Home Help Services (HHS)?

EXHIBITS

Exhibit A: Department's Hearing Summary, pp 1-52

Exhibits 1-13: Petitioner's Exhibits

Petitioner's attorney's request for a de novo hearing to accept evidence dated after the date of action in this matter is not necessary because, upon review, that evidence (Exhibits 11 and 12), will be accepted into the record.

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 an [REDACTED] year-old Medicaid beneficiary, born [REDACTED] who is diagnosed with lumbago, anxiety, osteoporosis, hip pain, hallucinations, schizophrenia, diabetes, and hearing loss. (Exhibit A, pp

11, 20; Testimony)

2. On January 29, 2020, the Department's ASW went to Petitioner's home to conduct an assessment with Petitioner and her daughter/provider. The ASW reviewed Petitioner's Activities of Daily Living (ADL's) and Instrumental Activities of Daily Living (IADL's). The ASW observed Petitioner transferring without assistance in and out of a chair and walking to and from the kitchen. Because Petitioner cannot hear, Petitioner's daughter spoke for her during the meeting and sometimes wrote questions down for her mother to answer. Petitioner's daughter noted that she is again helping Petitioner with bathing and toileting and she also noted there was more need for help with dressing. Petitioner's daughter reported that she now applies cream to Petitioner's legs twice daily so the ASW informed her that a new medical needs form (confirming this need) would be sent. (Exhibit A, p 15; Testimony)
3. Following the assessment, the ASW increased Petitioner's HHS for bathing, toileting and dressing, but decreased HHS for transferring. This resulted in an overall increase in HHS from 36 hours and 37 minutes per month (\$317.43) to 40 hours and 38 minutes per month (\$392.13). (Exhibit A, pp 12-16; Testimony)
4. On January 30, 2020, the Department sent Petitioner a Service Approval Notice informing Petitioner about the new HHS authorization. (Exhibit A, p 16; Testimony)
5. On May 11, 2020, Petitioner's daughter texted the ASW to inform her that she needed an increase in payment for providing her mother's HHS to \$1,260.00 per month, or the maximum amount of income she could receive under her own social security disability. Petitioner's daughter also left voice mail messages for the ASW on the same date indicating that she provides care to her mother 24 hours per day, 7 days per week and needs to be paid for this. (Exhibit A, pp 17-19, Exhibit 1, p 1-001; Exhibit 5, p 5-003; Testimony)
6. On May 15, 2020, the Department received an updated 54-A Medical Needs Form for Petitioner confirming Petitioner's skin care needs. (Exhibit A, p 20; Testimony)
7. Following receipt of the updated 54-A Medical Needs Form, the ASW added skin care to Petitioner's HHS, raising her monthly HHS to 45 hours and 39 minutes per month (\$543.26). This change was made retroactive to February 2020. (Exhibit A, pp 21-22, 25; Testimony)
8. On June 16, 2020, Petitioner's daughter left voice mail messages for the ASW indicating that she can work 34 hours per week and wants to be paid

for those hours by HHS. (Exhibit A, p 26; Testimony)

9. On May 18, 2020 and July 23, 2020, Petitioner's Requests for Hearing was received by the Michigan Office of Administrative Hearings and Rules.

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.

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.

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 adjoined 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
February 1, 2019, pp 1-8
Emphasis added*

The ASW testified that on January 29, 2020, she went to Petitioner's home to conduct an assessment with Petitioner and her daughter/provider. The ASW testified that she reviewed Petitioner's ADL's and IADL's and observed Petitioner transferring without assistance in and out of a chair and walking to and from the kitchen. The ASW indicated that following the assessment, she increased Petitioner's HHS for bathing, toileting, and dressing, but decreased HHS for transferring.

The ASW noted that on May 11, 2020, Petitioner's daughter texted her to inform her that she needed an increase in payment for providing her mother's HHS to \$1,260.00 per month, or the maximum amount of income she could receive under her own social security disability. The ASW indicated that Petitioner's daughter also left voice mail messages for the ASW on the same date indicating that she provides care to her mother 24 hours per day, 7 days per week and needs to be paid for this.

The ASW testified that on May 15, 2020, she received an updated 54-A Medical Needs Form for Petitioner confirming that Petitioner's daughter needs to apply cream to Petitioner's legs twice daily. The ASW then added skin care to Petitioner's HHS, raising her monthly HHS to 45 hours and 39 minutes per month (\$543.26), retroactive to February 2020. The ASW testified that on June 16, 2020, Petitioner's daughter left voice mail messages for the ASW indicating that she is able to work 34 hours per week per social security rules and wants to be paid for those hours by HHS. The ASW indicated that she also prorated some of Petitioner's IADL's per policy because Petitioner lives in a shared household.

Petitioner's primary care physician (PCP) testified that he has been Petitioner PCP since July 2015, but that Petitioner has been at the practice longer. Petitioner's PCP reviewed Petitioner's diagnoses and indicated that Petitioner needs help with most ADL's. Petitioner's PCP noted that Petitioner needs assistance going to the bathroom, is a fall risk, and would not be able to live independently without 24-hour in-home care. Petitioner's PCP reviewed a letter he authored on August 10, 2016 indicating that Petitioner's daughter serves as Petitioner's caregiver and outlined some of the caregiving services provided. (Exhibit 9). Petitioner's PCP noted that Petitioner's diabetes has worsened since 2016 but that Petitioner is stable. Petitioner's PCP also reviewed a letter he authored dated February 5, 2020 which indicates that Petitioner needs a full-time caretaker. (Exhibit 8). Petitioner's PCP opined that 45 hours of HHS per month would not be sufficient to keep Petitioner living independently in her own home.

Petitioner's daughter testified she and her mother have lived together in the U.S. since 1997 and lived in India prior to that. Petitioner's daughter indicated that Petitioner started receiving HHS in March 2011. Petitioner's daughter testified that most of her time is spent caring for her mother. Petitioner's daughter indicated that Petitioner is deaf, and she does all her tasks for her. Petitioner's daughter testified that her caretaking duties for her mother take about five hours per day, seven days per week. Petitioner's daughter noted that Petitioner is ■ years old and cannot do any tasks on her own. Petitioner's daughter testified that most of the care she provides is hands on and without this care Petitioner would be in a nursing home, which would be even more expensive. Petitioner's daughter testified that she is asking that she be paid 132 hours monthly for HHS.

Petitioner's daughter then reviewed all of Petitioner's ADL's and IADL's that she assists with and the time it takes to perform each task. Petitioner's daughter testified that it is not for her own personal interest that she is asking for the HHS to be increased, it is because her mother needs this care.

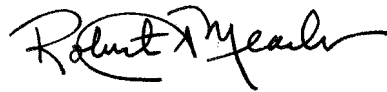
Based on the evidence presented, Petitioner has failed to prove by a preponderance of the evidence that the Department erred in authorizing her HHS. The ASW testified in a credible manner about her observations of Petitioner and answers to her questions during the reassessment. The ASW actually increased Petitioner's HHS both following the January 2020 assessment and after receiving confirmation of Petitioner's skin care needs. The fact that Petitioner's daughter has repeatedly asked for a specific payment for HHS equal to the amount of pay she can receive under her own social security disability raises doubts about her credibility regarding the amount of care she provides to her mother. In fact, if one adds up the time Petitioner's daughter claims that she provides care to her mother, it equals almost exactly the amount of HHS Petitioner's daughter has been requesting. It also is not disputed that Petitioner lives in a shared household, so it was proper for the ASW to prorate HHS for some of Petitioner's IADL's by one-half, as required by policy. The fact that Petitioner's daughter thinks it is easier to do laundry for her and her mother separately does not excuse enforcement of this policy. Finally, policy indicates that it is the ASW that determines the level of HHS following the comprehensive assessment, not Petitioner's doctor. 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 authorized Petitioner's HHS.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.



RM/sb

Robert J. Meade
Administrative Law Judge

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
MDHHS-HOME-HELP-POLICY@michigan.gov

DHHS

Amber Gibson
5303 South Cedar
PO BOX 30088
Lansing, MI
48911

DHHS Department Rep.

M. Carrier
Appeals Section
PO Box 30807
Lansing, MI
48909
MDHHS-Appeals@michigan.gov

Agency Representative

Emily Piggott
Appeals Section
PO Box 30807
Lansing, MI
48909 MDHHS-Appeals@michigan.gov

Counsel for Petitioner

John Schwend
4095 Legacy Parkway
Lansing, MI
48911
JSCHWEND@drmich.org

Petitioner

[REDACTED]
MI

Counsel for Petitioner

Simon Zagata
4095 Legacy Parkway, Suite 500
Lansing, MI
48911-4263
SZAGATA@drmich.org