



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: September 24, 2021
MOAHR Docket No.: 21-003819
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 hearing began on September 16, 2021, and was continued on September 23, 2021. [REDACTED] Petitioner's son and Authorized Hearing Representative (AHR) appeared and testified on Petitioner's behalf. Emily Piggott, Appeals Review Officer, appeared on behalf of Respondent, Michigan Department of Health and Human Services (MDHHS or Department). Lakeshia Gordon, Adult Services Worker (ASW) and Redonda Williams, Adult Services Supervisor, appeared as witnesses for the Department.

ISSUE

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

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 applied for HHS. (Exhibit A, p 8; Testimony)
2. Petitioner is diagnosed with low blood pressure, major depressive disorder, and hypothyroidism. (Exhibit A, pp 9, 11; Testimony)
3. On July 15, 2021, the ASW completed a comprehensive assessment with Petitioner's son via telephone due to the COVID-19 pandemic. During the assessment, the ASW determined that Petitioner did not have a need for hands on assistance with any Activities of Daily Living (ADL), functional ranking 3 or greater, but may have a need for assistance with the Instrumental Activities of Daily Living (IADL's) of meal preparation, shopping,

laundry, and housework because Petitioner has bad knees. The ASW noted that the diagnosis of bad knees was not listed as a diagnosis in the 54-A Medical Needs form and that Petitioner did not use any adaptive equipment to assist her with standing or walking. The ASW also noted that while there is a bath chair and grab bar in the bathroom, this equipment is used by Petitioner's spouse, who also lives in the home and applied for HHS. The ASW noted that it was reported to her that Petitioner did not need any hands-on assistance with bathing. (Exhibit A, p 12; Testimony)

4. A Medical Needs form completed by Petitioner's doctor indicated that Petitioner needs assistance with the ADL of bathing and the IADL's of taking medications, meal preparation, shopping, laundry, and housework. (Exhibit A, p 11; Testimony)
5. On August 2, 2021, the ASW sent Petitioner a Negative Action Notice indicating that HHS was denied based on the policy requiring a need for hands on assistance with at least one ADL, functional ranking 3 or greater. (Exhibit A, p 14; Testimony)
6. On August 17, 2021, Petitioner's hearing request was received by the Michigan Office of Administrative Hearings and Rules. (Exhibit A, p 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 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 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.
- Appropriate program enrollment type (PET) code.
- 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).

Certification of Medical Need

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 10-10M are acceptable for individuals treated by a VA physician; see ASM 115, Adult Services Requirements.

Need 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
June 1, 2020, 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

OVERVIEW

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

Functional Tab

The *Functional* Tab under the *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* 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.

*Adult Services Manual 120
April 1, 2021, pp 1-3
Emphasis added*

The ASW testified that on July 15, 2021, she completed a comprehensive assessment with Petitioner's son via telephone due to the COVID-19 pandemic. The ASW indicated that during the assessment, she determined that Petitioner did not have a need for hands on assistance with any ADL, functional ranking 3 or greater, but may have a need for assistance with the IADL's of meal preparation, shopping, laundry, and housework because Petitioner has bad knees. The ASW noted that the diagnosis of bad knees was not listed as a diagnosis in the 54-A Medical Needs form and that Petitioner did not use any adaptive equipment to assist her with standing or walking. The ASW also noted that while there is a bath chair and grab bar in the bathroom, this equipment is used by Petitioner's spouse, who also lives in the home and applied for HHS. Finally, the ASW noted that it was reported to her that Petitioner did not need any hands-on assistance with bathing.

The ASW testified that based on the information available at the time of the assessment, she concluded that Petitioner did not have a medical need, functional ranking of 3 or higher, with any ADL. The ASW indicated that on August 2, 2021, she sent Petitioner a Negative Action Notice indicating that HHS was denied based on the policy requiring a need for hands on assistance with at least one ADL, functional ranking 3 or greater.

Petitioner's son testified that his father has been suffering with many health issues for years and his mother, who is the Petitioner in this case, has been taking care of him. However, Petitioner's son indicated that his mother's health has also gotten worse as of late as her mental health has gone down during the pandemic and she cannot move very well due to her bad knees. Petitioner's son indicated that his mother receives cortisone shots in her knees. Petitioner's son also testified that his mother has high blood pressure, high cholesterol, can't see very well, and suffers from hypothyroidism. Petitioner's son testified that while his mother can bathe herself, he has to help her undress, get into the shower, and sit on the shower chair. Petitioner's son indicated that he must take care of all other chores in the home, as well as having to make all of his parents' appointments, all while maintaining his own full-time job.

Based on the evidence presented, Petitioner has failed to prove, by a preponderance of the evidence, that the Department erred in denying her HHS application. The evidence was not sufficient to establish that Petitioner had a need for hands on assistance, functional ranking 3 or greater, with at least one ADL, based on the information available to the ASW for this assessment. The ASW provided credible, detailed testimony regarding her discussion of ADLs with Petitioner's son during the assessment. Petitioner's son specifically informed the ASW that his mother could bathe herself independently. And, while it appears that may not have been the entire truth (as Petitioner's son indicated that he helps his mother get undressed and onto the shower chair), the ASW can only base her decision on the information provided to her. Policy also indicates that it is the ASW, not the beneficiary's doctor, who assesses and approves the need for HHS. As such, the fact that Petitioner's doctor indicated on the 54-A Medical Needs form that Petitioner needs assistance with bathing is not controlling. Accordingly, the denial of Petitioner's HHS application was proper and must be upheld.

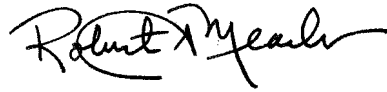
However, given that Petitioner's son did not provide the ASW with the complete picture regarding his mother's needs, the undersigned would recommend that Petitioner file a new application for HHS and that complete and accurate information be given during the next assessment.

DECISION AND ORDER

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

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

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Authorized Hearing Rep.

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