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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: October 19, 2021
MOAHR Docket No.: 21-004045
Agency No.:
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Steven Kibit

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.*, and upon a request for a hearing filed on the minor Petitioner's behalf.

After due notice, a telephone hearing was held on October 5, 2021. [REDACTED], Petitioner's mother, appeared and testified on Petitioner's behalf. [REDACTED] from the Genesee Health System also testified as a witness for Petitioner. Leigha Burghdoff, Appeals Review Officer, represented the Respondent Department of Health and Human Services (DHHS or Department). Josh Vorhees, Adult Services Worker (ASW), testified as a witness for the Department.

During the hearing, the Department submitted an evidence packet that was admitted into the record as Exhibit A, pages 1-35. Petitioner did not submit any exhibits.

ISSUE

Did the Department properly deny Petitioner's request for 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 who has been diagnosed with a history of GNAO1 Disorder; Infantile Epileptic Encephalopathy; Global Development Delay; Abnormal Movement; and Dysphagia. (Exhibit A, page 7).
2. On May 18, 2021, Petitioner was referred for HHS through the Department. (Exhibit A, page 8).

3. On June 24, 2021, the ASW conducted a comprehensive assessment of Petitioner in Petitioner's home, where Petitioner lives with his two parents. (Exhibit A, pages 9, 14; Testimony of ASW).
4. During that assessment, the ASW reviewed Petitioner's needs and determined that they required significantly higher levels of intervention than those required for a child of the same age without similar impairments. (Exhibit A, page 14; Testimony of ASW).
5. The ASW also reviewed Petitioner's father's medical needs, which were previously identified on a medical needs form submitted to the Department and determined that, based on those needs, Petitioner's father is unable to care for Petitioner. (Testimony of ASW).
6. The ASW further reviewed Petitioner's mother's medical needs, which were previously identified on a medical needs form submitted to the Department that indicated that she needed assistance with laundry and housework. (Testimony of ASW).
7. Petitioner and his mother are also authorized for respite care services through Genesee Health System in order to provide her with relief from the daily stress and care demands of providing unpaid care. (Testimony of Petitioner's Mother; Testimony of [REDACTED]).¹
8. Based on their discussion, the medical needs form and the ASW's observations regarding Petitioner's mother's care for Petitioner during the assessment, the ASW determined that Petitioner's mother was able and available to provide care to Petitioner. (Exhibit A, page 14; Testimony of ASW).
9. On June 30, 2021, the Department sent Petitioner written notice that the request for HHS. (Exhibit A, page 13).
10. With respect to the reason for the denial, the notice stated:

Policy ASM 120 states that clients who have a "Responsible Relative" who are able and available to care for them do not qualify for services. As [Petitioner] is a minor and lives with his parents who are considered Responsible Relatives. Your case is being denied, as you do not meet the criteria based

¹ "Respite care services are intended to assist in maintaining a goal of living in a natural community home and are provided on a short-term, intermittent basis to relieve the beneficiary's family or other primary caregiver(s) from daily stress and care demands during times when they are providing unpaid care." Medicaid Provider Manual, July 1, 2021 version, Behavioral Health and Intellectual and Developmental Disability Supports and Services Chapter, Section 17.3.I.

on the policy cited above.

Exhibit A, page 13

11. On August 31, 2021, the Michigan Office Administrative Hearings and Rules (MOAHR) received the request for hearing filed in this matter with respect to that decision. (Exhibit A, pages 5-7).

CONCLUSIONS OF LAW

The Medical Assistance Program is established pursuant to Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). It is administered in accordance with state statutes, the Social Welfare Act, the Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

Home Help Services (HHS) are provided to enable functionally limited individuals to live independently and receive care in the least restrictive, preferred settings. These activities must be certified by a physician and may be provided by individuals or by private or public agencies.

Adult Services Manual (ASM) 101 (4-1-2018) and ASM 120 (4-1-2021) address the issue of what services were included in HHS and how such services were assessed at the time of the action in this case. For example, ASM 101 provides in part:

Home help services are non-specialized personal care service activities provided under the independent living services program to persons who meet eligibility requirements.

Home help services are provided to enable individuals with functional limitation(s), resulting from a medical or physical disability or cognitive impairment to live independently and receive care in the least restrictive, preferred settings.

Home help services are defined as those tasks which the department is paying for through Title XIX (Medicaid) funds. These services are furnished to individuals who are **not** currently residing in a hospital, nursing facility, licensed foster care home/home for the aged, intermediate care facility (ICF) for persons with developmental disabilities or institution for mental illness.

These activities **must** be certified by a Medicaid enrolled medical professional and may be provided by individuals or by private or public agencies. **The medical professional**

does not prescribe or authorize personal care services. Needed services are determined by the comprehensive assessment conducted by the adult services specialist.

Personal care services which are eligible for Title XIX funding are limited to:

Activities of Daily Living (ADL)

- Eating.
- Toileting.
- Bathing.
- Grooming.
- Dressing.
- Transferring.
- Mobility.

Instrumental Activities of Daily Living (IADL)

- Taking medication.
- Meal preparation/cleanup.
- Shopping for food and other necessities of daily living.
- Laundry.
- Light housecleaning.

An individual must be assessed with at least one activity of daily living (ADL) in order to be eligible to receive home help services.

Note: If the assessment determines a need for an ADL at a level 3 or greater but these services are not paid for by the department, the individual would be eligible to receive IADL services.

Example: Ms. Smith is assessed at a level 4 for bathing however she refuses to receive assistance. Ms. Smith would be eligible to receive assistance with IADL's [sic] if the assessment determines a need at a level 3 or greater.

Note: If an individual uses adaptive equipment to assist with an ADL, and without the use of this equipment the person would require hands-on care, the individual must be ranked a level 3 or greater on the functional assessment. This individual would be eligible to receive home help services.

Example: Mr. Jones utilizes a transfer bench to get in and out of the bathtub which allows him to bathe himself without the hands-on assistance of another. The adult services specialist must rank Mr. Jones a 3 or greater under the functional assessment. Mr. Jones would be eligible to receive home help services.

Assistive technology would include such items as walkers, wheelchairs, canes, reachers, lift chairs, bath benches, grab bars and handheld showers.

Expanded Home Help Services (EHHS)

Expanded home help services can be authorized for individuals who have severe functional limitations which require such extensive care that the service cost must be approved by the adult services supervisor/local office designee and/or the MDHHS Home Help Policy Section. See ASM 120 (Adult Services Comprehensive Assessment [sic]).

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.

When assessing a client with complex care needs refer to the Complex Care Assessment MDHHS-5535 from MiAIMS.

Home Help Services for Minor Children

When providing for minor children, personal care services must be shown to be a necessary supplement to usual parental care, justified by the high service needs of the family. High service needs are those which arise from a physical, medical, emotional, or mental impairment of the minor child and which require significantly higher levels of intervention than those required by a child of the same age without similar impairments.

Example: It is expected that a one-year-old child would be incontinent due to age however; a 16-year-old minor would likely have a medical or cognitive condition causing incontinence.

Children typically have responsible relatives (parents/adoptive parents) able and available to provide for their care needs. When responsible relatives are unable due to a medical condition, or unavailable due to employment or school, they can hire a caregiver to perform the activities of daily living, medication administration and meal preparation required during the parent's absence. Parents cannot be the paid caregiver for their minor children.

Note: A medical needs form must provide verification the responsible relative is unable to provide care due to a medical condition. If the responsible relative is unavailable due to employment or school, they must provide a work or school schedule to verify they are unavailable to provide care.

The adult services worker **must not** authorize approval for tasks that can be completed by the responsible relative during the time they are available.

Payments are **only** for the amount of time related to the approved tasks and cannot include time for childcare, supervision and monitoring. The ASW must ensure there are no duplication of services.

The adult services worker must evaluate whether day-care

services are appropriate rather than home help services.

Services not Covered by Home Help

Home help services must **not** be approved for the following:

- Supervising, monitoring, reminding, guiding, teaching or encouraging (functional assessment rank 2).
- Services provided for the benefit of others.
- Services for which a responsible relative is **able** and **available** to provide (such as house cleaning, laundry or shopping). A responsible relative is defined as an individual's spouse or a parent of an unmarried child under age 18.
- Services provided by another resource at the same time (for example, hospitalization, MI-Choice Waiver).
- Transportation - See Bridges Administrative Manual (BAM) 825 for medical transportation policy and procedures.
- Money management such as power of attorney or representative payee.
- Home delivered meals.
- Adult or child day care.
- Recreational activities. (For example, accompanying and/or transporting to the movies, sporting events etc.)

Note: The above list is not all inclusive.

*ASM 101, pages 1-5
(underlined added for emphasis)*

Moreover, ASM 120 states in part:

Responsible Relatives

A responsible relative is defined as an individual's spouse or a parent of an unmarried child under the age of 18.

Activities of daily living (ADLs) 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 *Contacts* module in MiAIMS.

Example: Mrs. Smith needs Home Help services. Her spouse is employed and is out of the home Monday through 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 and is able to complete these tasks on the weekends.

*ASM 120, pages 7-8
(underline added for emphasis)*

Here, the Department decided to deny Petitioner's request for HHS pursuant to the above policies and on the basis that the minor Petitioner has a responsible relative, *i.e.*, his mother, who is able and available to provide any services he needs.

In response, Petitioner's mother/representative testified she is caring for both her husband and son, and that she has her own health issues and is struggling. She also testified that, while she receives respite from Genesee Health System, she is only able to use it to go to medical appointments. She further testified that she is asking for help.

The representative of Genesee Health System testified that Petitioner is receiving respite, but that those services come with limitations and that the respite workers are not there to meet all of Petitioner's needs.

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

Given the available information and applicable policies in this case, Petitioner has failed to meet that burden of proof and the Department's decision must be affirmed. Petitioner is a minor who lives with his parents; the above policies expressly provide that HHS must not be approved where there is a responsible relative, such as the parent to minor child, able and available to provide care; and that is the situation in this case. For example, while Petitioner's mother testified regarding her own health issues, she is clearly able to provide the necessary care as she has been both providing it and providing it to such an extent that she has been approved for respite care as short-term

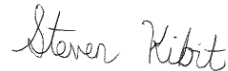
relief from the daily stress and care demands of providing unpaid care. Moreover, Petitioner's mother is also available to provide care as she is in the home with Petitioner while the above policy defines "Unavailable" the "absence from the home for an extended period due to employment, school, or other legitimate reasons." Accordingly, Petitioner does not meet the criteria for HHS and his request was properly denied.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly denied Petitioner's request for HHS.

IT IS, THEREFORE, ORDERED that:

The Department's decision is **AFFIRMED**.



SK/sb

Steven Kibit
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

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Authorized Hearing Rep.

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