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GOVERNOR

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

ORLENE HAWKS
DIRECTOR



Date Mailed: January 27, 2022
MOAHR Docket No.: 21-005853
Agency No.: [REDACTED]
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 the Petitioner's request for a hearing.

After due notice, a telephone hearing was held on January 20, 2022. Petitioner, using an interpreter, appeared and testified on his own behalf. Florence Scott-Emuakpor, Appeals Review Officer, represented the Respondent Michigan Department of Health and Human Services (DHHS or Department). Bridget Marzette, 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 1-15. 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 was referred for HHS through the Department on September 7, 2021. (Exhibit A, page 8).
2. As part of his application, Petitioner indicated that he was married, and that his spouse was neither disabled nor worked outside of the home. (Testimony of ASW).
3. On October 21, 2021, the ASW, using an interpreter, initiated a comprehensive assessment with Petitioner. (Exhibit A, page 10).

4. During the assessment, Petitioner again stated that his spouse was neither disabled nor worked outside of the home. (Exhibit A, page 10).
5. He also stated that his spouse had recently worked as a caregiver for Petitioner's mother. (Exhibit A, page 10).
6. On October 21, 2021, the Department sent Petitioner written notice that the request for HHS was denied because he did not qualify for HHS. (Exhibit A, page 7).
7. On November 22, 2021, the Michigan Office of Administrative Hearings and Rules (MOAHR) received the request for hearing filed in this matter with respect to that decision. (Exhibit A, page 6).

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.

* * *

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 1-3, 4-5
(Underline added for emphasis)*

Moreover, ASM 120 states in part:

Functional Tab

The *Functional* Tab under *Assessment* module in MiAIMS is the basis for service planning and for 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 3 level 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 [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 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, reachers, 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.

* * *

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 2-5
(Underline added for emphasis)*

Here, the Department denied Petitioner's request for HHS pursuant to the above policies and on the basis that Petitioner had an available and able responsible relative to provide him with the care he needed.

In support of that action, the ASW testified that Petitioner both stated in his application or reported during the assessment that he was married; his spouse was neither disabled nor worked outside of the home; and that his spouse had recently worked as a caregiver for Petitioner's mother. The ASW also testified that, given those reports, Petitioner did not meet the criteria for HHS given the applicable policies.

In response, Petitioner testified that he was hospitalized in July and that, even after he was discharged, he is still on oxygen and has multiple health problems. He also testified that his wife helps him within their home, but that she does not drive and that his daughter must provide him with transportation and assistance outside of the home. He further testified that he has many medical appointments that he needs transportation to and assistance at.

Petitioner bears the burden of proving by a preponderance of the evidence that the Department erred in denying his request for HHS. Moreover, the undersigned Administrative Law Judge is limited to reviewing the Department's decision in light of the information it had at the time it made the decision.

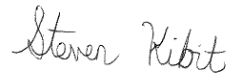
Given the available information and applicable policies in this case, Petitioner has failed to meet that burden of proof and the Department's decision must be affirmed. The above policies expressly provide that HHS must not be approved for services for which a responsible relative, such as a spouse, are able and available to provide care, and it is undisputed in this case that Petitioner's wife is both able and available to provide necessary assistance in the home. Moreover, while Petitioner's wife cannot drive or transport him to medical appointments, that similarly does not meet the criteria for HHS as ASM 101 also expressly provides that HHS must not be approved transportation.

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/tem

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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