



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED] MI [REDACTED]

Date Mailed: March 2, 2022
MOAHR Docket No.: 21-006057
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 March 1, 2022. [REDACTED] Petitioner, appeared and testified on her own behalf. Leigha Burghdoff, Appeals Review Officer (ARO), represented Respondent, Michigan Department of Health and Human Services (MDHHS or Department). Vivian Hurst, Adult Services Supervisor, 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 1-78

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 cervical disc disorder with myelopathy, tear of meniscus, coronary atherosclerosis, diabetes mellitus, endocarditis, chronic obstructive pulmonary disease, gastroparesis, hyperlipidemia, hernias, and ulcers. (Exhibit A, p 14; Testimony)
2. On June 30, 2020, the Department's Adult Services Worker (ASW) sent Petitioner a Negative Action Notice informing Petitioner that her case would be closed effective July 14, 2020 for failure to complete the required six-month review. (Exhibit A, p 15 Testimony)
3. However, due to MSA Bulletin 20-19 regarding COVID, Petitioner's case was not actually closed and the ASW continued to try to contact Petitioner

to schedule the six-month review. The ASW documented in MiAMES phone attempts to reach Petitioner on June 30, 2020, September 30, 2020, December 16, 2020, January 25, 2021, February 9, 2021, February 18, 2021, March 30, 2021, April 29, 2021, May 12, 2021, and June 10, 2021. The ASW also documented sending letters to Petitioner on the same dates. (Exhibit A, pp 15-23; Testimony)

4. Even though Petitioner's case remained open, Petitioner, relying on the June 30, 2020 Negative Action Notice and a phone call with the ASW, stopped receiving HHS. Petitioner testified that she paid privately for care during this period. (Exhibit A, pp 6-7; Testimony)
5. On July 29, 2021, Petitioner contacted the Department and provided a new phone number. (Exhibit A, p 24; Testimony)
6. On October 13, 2021, after being informed that Petitioner wanted to restart HHS, the ASW sent Petitioner a new 54A Medical Needs form. (The 54A Medical Needs form was required by policy because it had been over one year since Petitioner received HHS.) (Exhibit A, p 24; Testimony)
7. On October 29, 2021, the Department received Petitioner's new 54A Medical Needs form, but the form could not be accepted because no diagnoses were listed. (Exhibit A, pp 25, 27; Testimony)
8. The ASW sent Petitioner a new 54A Medical Needs form, which was received on November 16, 2021. (Exhibit A, p 28; Testimony)
9. On November 23, 2021, the Department sent Petitioner a Service Approval Notice informing Petitioner that she was approved for 42 hours and 21 minutes of HHS per month, effective November 1, 2021. (Exhibit A, pp 8, 28; Testimony)
10. On December 20, 2021, Petitioner's Request for Hearing was received by the Michigan Office of Administrative Hearings and Rules. However, the request was not signed so it was returned to Petitioner. A signed request was then received on February 7, 2022. (Exhibit A, pp 6-7)

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 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*

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*

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
Emphasis added*

ASM 120 ADULT SERVICES COMPREHENSIVE ASSESSMENT

OVERVIEW

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 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.

ASM 135 – HOME HELP CAREGIVERS

CAREGIVER INTERVIEW

Explain the following **points** to the client and the caregiver(s) during the initial interview:

The client and/or individual caregiver is responsible for notifying the ASW within **10-business days** of any change; including but not limited to hospitalizations, nursing home, or adult foster care admissions.

*Adult Services Manual 135
October 1, 2021, pp 4-5*

The Adult Services Supervisor (Supervisor) testified that she was appearing on behalf of the ASW, who was unavailable for the hearing. The Supervisor indicated that on June 30, 2020, the ASW sent Petitioner a Negative Action Notice informing Petitioner that her case would be closed effective July 14, 2020 for failure to complete the required six-month review. The Supervisor testified that due to MSA 20-19 COVID policy, Petitioner's case was not actually closed and the ASW continued to try to contact Petitioner to schedule the six-month review. The Supervisor indicated that the ASW documented in MiAMES phone attempts to reach Petitioner on June 30, 2020, September 30, 2020, December 16, 2020, January 25, 2021, February 9, 2021, February 18, 2021, March 30, 2021, April 29, 2021, May 12, 2021, and June 10, 2021, and sending letters to Petitioner on the same dates. The Supervisor testified that on July 29, 2021, Petitioner contacted the Department and provided a new phone number. The Supervisor indicated that on October 13, 2021, after being informed that Petitioner wanted to restart HHS, the ASW sent Petitioner a new 54A Medical Needs form, needed per policy because it had been over one year since Petitioner received HHS. The Supervisor indicated that on October 29, 2021, the Department received Petitioner's new 54A Medical Needs form, but the form could not be accepted because no diagnoses were listed. The Supervisor testified that the ASW sent Petitioner a new 54A Medical Needs form, which was received on November 16, 2021 and November 23, 2021. The Department sent Petitioner a Service Approval Notice informing Petitioner that she was approved for 42 hours and 21 minutes of HHS per month, effective November 1, 2021.

Petitioner testified that in the summer of 2020, she was contacted by the ASW who was wondering why Petitioner's caregiver had not returned her logs. Petitioner indicated that she would check with her caregiver but that the ASW informed her that her case was going to be closed for failure to submit the caregiver logs. Petitioner testified that

the ASW is now trying to say that her case was closed due to failure to have a six-month review, but the ASW told her it was because of the logs. Petitioner also indicated that the ASW once told her the case was closed because Petitioner asked for it to be closed. Petitioner testified that her case was not kept open because when she tried to restart care in 2021, she had to complete a new application and 54A Medical Needs form. Petitioner indicated that since she tried to restart care, the ASW has not returned her calls and she finally had to speak to the supervisor and the liaison, who was very helpful. Petitioner testified that it is humorous that the ASW says she tried to call Petitioner ten times given that she left at least that many messages for the ASW and never received a call back. Petitioner indicated that she also thinks the ASW delayed the reopening of her case because the ASW was mad that Petitioner spoke to her supervisor. Petitioner testified that the ASW was very angry and condescending when she spoke to her in October and would not even send her the Request for Hearing form when Petitioner indicated that she wanted to appeal. Petitioner testified that she wants her caregiver to get back pay and she wants a new worker assigned to her case.

In response, the Department's ARO indicated that it does not appear that logs were ever submitted for April, May or June 2020, so if those logs exist, Petitioner or her caregiver could contact the Department's hotline to see if they could still be paid.

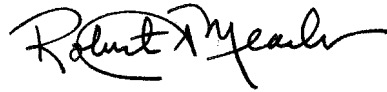
Based on the evidence presented, Petitioner has failed to prove by a preponderance of the evidence that the Department erred in authorizing her HHS. Petitioner stopped receiving HHS in the summer of 2020 and did not try to receive services again until the Fall of 2021. Per policy, Petitioner was required to then fill out a new application and 54-A Medical Needs form because it had been so long since she last received HHS. This would be true regardless of the reason Petitioner stopped receiving HHS. The Department also properly began Petitioner's HHS at the beginning of the month (November 2021) in which the Department received a properly completed 54A Medical Needs form. While this ALJ understands that Petitioner has had difficulties with her ASW, this ALJ does not manage the Department's ASW's and has no authority to order the Department to assign Petitioner a new ASW, even though it seems like that would be the prudent thing to do under the circumstances. However, based on the evidence presented the Department properly approved Petitioner's HHS based on policy effective November 1, 2021.

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/tem

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-Location Contact

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Petitioner

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