



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

Date Mailed: February 16, 2022
MOAHR Docket No.: 22-000066; 22-000067
Agency No.: [REDACTED]
Petitioners: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Robert J. Meade

DECISION AND ORDER

These matters are before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.*, upon Petitioners' request for a hearing.

After due notice, a telephone hearing was held on February 15, 2022. [REDACTED] Petitioners' daughter, appeared and testified on Petitioners' behalf. Petitioners [REDACTED] and [REDACTED] appeared but did not testify. Father [REDACTED] appeared as an interpreter for Petitioners. Allison Pool, Appeals Review Officer, represented Respondent, Michigan Department of Health and Human Services (MDHHS or Department). Jamie Lucente, Adult Services Worker (ASW), appeared as a witness for the Department.

ISSUE

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

EXHIBITS

Exhibit A: Department's Hearing Summary, Gjoke Mitaj, pp 1-45

Exhibit B: Department's Hearing Summary, File Mitaj, pp 1-39

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 [REDACTED] is a [REDACTED]-year-old Medicaid beneficiary, born [REDACTED] [REDACTED] who is diagnosed with dementia. (Exhibit A, p 11; Testimony)
2. Petitioner [REDACTED] is a [REDACTED]-year-old Medicaid beneficiary, born [REDACTED] [REDACTED] who is diagnosed with arthritis, depression, and back pain. (Exhibit B, p 11; Testimony)
3. Petitioners live with each other, as well as their son, and their son's wife, who is also their HHS caregiver. (Exhibit A, p 13; Testimony)

4. On November 29, 2021, the Department's ASW conducted a telephone assessment (due to COVID-19) with Petitioners, Petitioners' caregiver/daughter-in-law, and a representative from Great Lakes Care Partners, who served as an interpreter. The ASW thoroughly reviewed Petitioners' Activities of Daily Living (ADL's) and Instrumental Activities of Daily Living (IADL's). (Exhibit A, p 20; Exhibit B, p 16; Testimony)
5. Following the assessment, the ASW approved Petitioners for HHS for all ADL's and IADL's. Petitioner [REDACTED] was approved for 53 hours and 27 minutes of HHS per month (\$1,000.30) and Petitioner [REDACTED] was approved for 50 hours and 27 minutes of HHS per month (\$943.98). (Exhibits A-B, pp 9-10; Testimony)
6. The ASW prorated Petitioners' HHS for IADL's due to living in a shared household with their son and daughter-in-law, per policy. (Exhibit A, p 35; Testimony)
7. On December 3, 2021, the Department sent Petitioners a Service Approval Notice informing Petitioners about the HHS authorizations. (Exhibits A-B, pp 7-8; Testimony)
8. On January 4, 2022, the ASW conducted a phone conference with Petitioners' caregiver/daughter-in-law and the agency representative. Following this conference, Petitioner [REDACTED] HHS was increased to 81 hours per month. (Exhibit A, pp 23-24; Testimony)
9. On January 6, 2022, Petitioners' Requests for Hearing were 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

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.

*Adult Services Manual 120
April 1 2021, pp 1-8
Emphasis added*

The ASW testified on November 29, 2021, she conducted a telephone assessment (due to COVID-19) with Petitioners, Petitioners' caregiver/daughter-in-law, and a representative from Great Lakes Care Partners, who served as an interpreter. The ASW thoroughly reviewed Petitioners' ADL's and IADL's. The ASW indicated that based on this assessment, Petitioner [REDACTED] was approved for 53 hours and 27 minutes of HHS per month (\$1,000.30) and Petitioner [REDACTED] was approved for 50

hours and 27 minutes of HHS per month (\$943.98). The ASW testified that she prorated Petitioners' HHS for IADL's due to Petitioners living in a shared household with their son and daughter-in-law, per policy. The ASW indicated that on December 3, 2021, she sent Petitioners a Service Approval Notice informing Petitioners about the HHS authorizations. The ASW testified, however, that on January 4, 2022, she conducted a phone conference with Petitioners' caregiver/daughter-in-law and the agency representative to address their concerns about the authorization and that following this conference, Petitioner [REDACTED] HHS was increased to 81 hours per month.

Petitioners' daughter testified that Petitioners need service from the time they get up until the time they go to bed. Petitioners' daughter indicated that she and Petitioners' caregivers needed more assistance because Petitioners need to be monitored 24/7 so that they do not fall and get hurt. Petitioners' daughter also indicated that she and the caregivers need to do everything inside and outside of the home for Petitioners, including driving them to their doctors. Petitioners' daughter testified that they need many, many hours as Petitioners' needs are constant.

In response, the ASW testified that HHS does not pay for supervision, so Petitioners' caregivers cannot be paid for watching Petitioners to ensure that they do not fall. The ASW further indicated that HHS does not pay caregivers to take clients to the doctor and does not pay to watch someone 24/7/365.

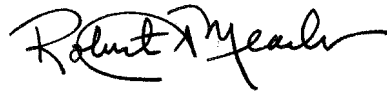
Based on the evidence presented, Petitioners have failed to prove by a preponderance of the evidence that the Department erred in authorizing their HHS. The ASW testified in a credible manner about her thorough assessments of Petitioners and answers to her questions during the reassessment. The ASW actually increased Petitioner Gjoke's HHS significantly following a phone conference after the initial assessment. While it is understandable that Petitioners may need full-time supervising and monitoring, HHS, as indicated above, is not able to provide this service. It also is not disputed that Petitioners live in a shared household, so it was proper for the ASW to prorate HHS for Petitioners' IADL's by one-half, as required by policy. Finally, policy indicates that it is the ASW that determines the level of HHS following the comprehensive assessment, not Petitioners' doctors. As such, the Department's ASW properly calculated Petitioners' 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 Petitioners' HHS.

IT IS THEREFORE ORDERED THAT:

The Department's decisions are **AFFIRMED**.

A handwritten signature in black ink, appearing to read "Robert J. Meade", written in a cursive style.

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

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