



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: May 2, 2022
MOAHR Docket No.: 22-001242
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 Petitioner's request for a hearing.

After due notice, a telephone hearing was held on April 20, 2022. Petitioner appeared and testified on his own behalf. Leigha Burghdoff, Appeals Review Officer, appeared on behalf of the Respondent Michigan Department of Health and Human Services (DHHS or Department). Brigeda Nelson, Adult Services Worker (ASW), testified as a witness for the Department. Also present for the telephone hearing, but not testifying, were [REDACTED] Petitioner's girlfriend; Barbara Waldon, a representative from the agency that provides Petitioner's services; and Margo Peterson, Adult Services Supervisor.

During the telephone hearing, the Department submitted an evidence packet that was admitted into the record as Exhibit A, pages 1-54. No other proposed exhibits were admitted.

ISSUES

Did the Department err in determining the amount of Petitioner's Home Help Services (HHS)?¹

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 Medicaid beneficiary who has been diagnosed with lumbago; chronic obstructive pulmonary disease; frequent falls; neuropathy; and a spinal injury. (Exhibit A, pages 8, 12-13).

¹ Petitioner also requested that the ASW assigned to his case be removed, but as explained during the hearing, that issue is beyond the scope of the undersigned Administrative Law Judge's jurisdiction and the Decision and Order will be limited to the specific, disputed action taken by the Department.

2. On February 23, 2011, Petitioner was approved for HHS. (Exhibit A, page 11).
3. As of March 1, 2018, Petitioner was approved for 34 hours and 15 minutes per month of HHS. (Exhibit A, pages 20-21).
4. On January 6, 2022, the ASW conducted a routine six-month review with Petitioner; and, during that assessment, Petitioner reported no changes with his needs or services. (Exhibit A, page 18; Testimony of Petitioner; Testimony of ASW).
5. Following that review, Petitioner remained approved for 34 hours and 15 minutes per month of HHS. (Exhibit A, pages 20-21; Testimony of ASW).
6. Later that month, Petitioner's services stopped after he ended his services with his provider agency. (Exhibit A, page 17; Testimony of ASW).
7. On March 1, 2022, Petitioner obtained a new provider agency. (Exhibit A, page 15).
8. That same day, after speaking with a representative from the new provider agency, the ASW sent Petitioner a Services Approval Notice. (Exhibit A, pages 6, 15).
9. In that notice, Petitioner was again approved for 34 hours and 15 minutes per month of HHS. (Exhibit A, page 6).
10. On March 24, 2022, the Michigan Office of Administrative Hearings and Rules (MOAHR) received the request for hearing filed in this matter regarding the amount of HHS approved. (Exhibit A, pages 5-10).

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.

Adult Services Manual (ASM) 101 (4-1-2018) and ASM 120 (4-1-2021) address the issues of what services were included in HHS and how such services are assessed 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

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.

Complex Care Needs

Complex care refers to conditions requiring intervention with special techniques and/or knowledge. These complex care tasks are performed on client's 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 and feeding.
- Catheters or legs bags.
- Colostomy care.
- Bowel program.
- Suctioning.
- Specialized skin care.
- Range of motion exercises.
- Peritoneal dialysis.
- Wound care.
- Respiratory treatment.
- Ventilators.

- Injections.

When assessing a client with complex care needs, refer to the MDHHS-5535, Complex Care Assessment, from MiAIMS forms for assistance with activity ranking, frequency, and length of time needed...

ASM 120, pages 2-5

Here, the Department approved Petitioner for 34 hours and 15 minutes per month of HHS pursuant to the above policies.

In support of the Department's decision, the ASW testified that Petitioner's services were reauthorized after a temporary stop due to provider issues and that the amount authorized was based on what he had been previously approved for. She also testified that Petitioner has been approved for that same amount since March 2018 and that, during the most recent review prior to the approval at issue in this case, Petitioner did not report any changes in his needs or request any increase in services.

In response, Petitioner testified that he did ask for more hours from the very beginning, but that the worker told Petitioner's doctor that Petitioner did not need more hours. Petitioner also testified that no one with his medical issues can have their needs met in one hour per day.

Petitioner also testified that he was getting more hours in 2018 and that the recent decision was cut, but he could not identify what he was receiving before or what the reduction in his services was.

He further testified that his care provider does everything for him and, in response to a request to be more specific, he generally described the assistance he needs.

Petitioner did agree that he never asked for more hours during the most recent review in January 2022.

Petitioner bears the burden of proving by a preponderance of the evidence that the Department erred in this case. Moreover, the undersigned Administrative Law Judge is limited to reviewing the Department's decision in light of the information that was available at the time the decision was made.

Given the available information and applicable policies in this case, Petitioner has failed to meet his burden of proof and the Department's decision must therefore be affirmed.

While Petitioner testified that the most recent decision was a reduction in services, his testimony lacked any details; he failed to support it with any evidence; and it is contradicted by the Department's record regarding past approvals. Accordingly, the

undersigned Administrative Law Judge finds that the Department reauthorized Petitioner at the amount he was previously approved for.

The undersigned Administrative Law Judge also finds that the reauthorized amount was proper given the available information as Petitioner had been approved for that amount for years and he did not describe any changes in his needs or request additional services during the most recent review. Moreover, while Petitioner broadly stated during the hearing that he needs more hours, he failed to support that assertion with specific testimony, and the needs he did describe are consistent with the rankings found by the ASW.

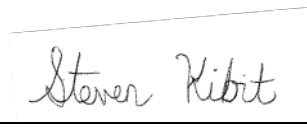
To the extent Petitioner has additional or updated information regarding his need for additional HHS, he can always request additional services again in the future. With respect to the issue in this case, however, the Department's decision must be affirmed given the available record and applicable policies.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED that:

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

A rectangular box containing a handwritten signature in cursive script that reads "Steven Kibit".

Steven Kibit
Administrative Law Judge

SK:tem

NOTICE OF APPEAL: Petitioner 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
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