



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

Date Mailed: July 11, 2022
MOAHR Docket No.: 22-002346
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Marya Nelson-Davis

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; 42 CFR 431.200 to 431.250; and 42 CFR 438.400 to 438.424, upon the Petitioner's request for a hearing.

After due notice, a hearing was held on Tuesday, July 5, 2022. Petitioner appeared and testified. [REDACTED] appeared and testified as a witness on behalf of Petitioner. Allison Pool, Appeals Review Officer (ARO), represented the Department of Health and Human Services (Department). Ryan DeVoe, Adult Services Worker (ASW) appeared and testified as a witness on behalf of Department.

ISSUE

Did the Department properly determine Petitioner's Home Help Services (HHS) eligibility?

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 March 25, 1956, who was diagnosed with hypertension, diabetes 2, urinary incontinence, weakness in her upper and lower extremities, anxiety, and depression. (Exhibit A, pp. 9-11)
2. Petitioner applied for HHS on March 2, 2022. (Exhibit A, p. 10)
3. Petitioner's medical doctor completed a Medical Needs form indicating that Petitioner needs assistance with meal preparation, toileting, shopping, bathing, mobility, laundry, grooming, taking medications, and housework. (Exhibit A, p. 11)

4. On March 3, 2022, the Department's ASW conducted a telephone assessment (due to COVID-19) with Petitioner who reported needing services with bathing, mobility, housework, laundry, shopping for food/meds and travel. (Exhibit A, p 17)
5. Following the assessment, the ASW approved Petitioner for HHS for ADL's and IADL's, which included bathing, mobility, housework, laundry, shopping for food/meds, and travel for shopping; and Petitioner was approved for 16 hours and 37 minutes of HHS per month. (Exhibit A, pp 2, 12 & 13)
6. On March 3, 2022, the Department sent Petitioner an HHS Approval Notice informing Petitioner that HHS would start on March 2, 2022, in the amount of 16 hours and 37 minutes monthly. (Exhibits A, pp 2 & 22)
7. On May 18, 2022, the Michigan Office of Administrative Hearings and Rules received Petitioner's written request for hearing contesting the amount of HHS hours she was approved for.

CONCLUSIONS OF LAW

The Medical Assistance Program (MA) 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 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 health professional and may be provided by individuals or by private or public agencies.

The Adult Services Manual (ASM) addresses 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 a client's need for services. The comprehensive assessment must be completed on **all open Home Help services cases**. The 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 the ***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* 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 5-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 ranking of level 3 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*

Petitioner requested a hearing because she disagrees with the Department's determination that she is only eligible for 16 hours and 37 minutes of HHS per month. Petitioner had the burden of proving by a preponderance of evidence that the Department erred in determining the amount of HHS she was eligible to receive.

The Department's HHS eligibility determination must be upheld. Petitioner failed to meet her burden of proving that the Department erred in determining her HHS eligibility. This Administrative Law Judge is limited to reviewing the Department's HHS eligibility determination based on the information that was available to it at the time the HHS eligibility determination was made. In this case, Petitioner and her witness agreed that the Department made the correct HHS eligibility determination based on the information that was available to it when Petitioner was approved for HHS. Furthermore, HHS policy indicates that it is the Department's ASW that determines the level of HHS following the comprehensive assessment, not Petitioner's medical doctor or qualified medical source.

Petitioner and her witness testified that Petitioner needs additional HHS hours because Petitioner's circumstances have changed. This Administrative Law Judge advised Petitioner to report her change in circumstances to her ASW so that that the Department may properly act upon the change and reassess her eligibility for HHS.

DECISION AND ORDER

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

IT IS, THEREFORE, ORDERED that:

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



MN-D/dh

Marya Nelson-Davis
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

Via Electronic Mail:

DHHS Department Contact

Michelle Martin
Capitol Commons
Lansing, MI 48909
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Policy@michigan.gov**

DHHS

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Via First Class Mail:

Petitioner

[REDACTED]

[REDACTED] MI [REDACTED]

Authorized Hearing Rep.

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[REDACTED] MI [REDACTED]