



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: September 16, 2022
MOAHR Docket No.: 22-003558
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 September 15, 2022. Petitioner, [REDACTED], appeared and testified on her own behalf. [REDACTED], Petitioner's daughter, appeared as a witness. Leigha Burghdoff, Appeals Review Officer, represented the Respondent, Michigan Department of Health and Human Services (MDHHS or Department). Jeffrey Love, Adult Services Worker (ASW), 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 1-107

Exhibit 1: Request for Hearing Received by MOAHR on August 23, 2022.¹

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 receiving HHS since at least 1991. (Exhibit A, p 14; Testimony)
2. On April 21, 2022, the Department's ASW conducted a 6-month

¹ The Request for Hearing submitted in the Department's hearing packet only shows the date stamp for the request being received at the local office, so the request received by MOAHR on August 23, 2022, was added as an Exhibit after the hearing.

review/assessment with Petitioner via telephone (due to the COVID-19 pandemic). The ASW reviewed Petitioner's Activities of Daily Living (ADL's) and Instrumental Activities of Daily Living (IADL's). Petitioner informed the ASW during the assessment that she completed mobility on her own in her electric wheelchair but needed help in and out of the chair. The ASW informed Petitioner that this would be considered transferring, which Petitioner's caregiver is paid for, not mobility. Petitioner also informed the ASW that she was not currently receiving any wound care. (Exhibit A, pp 31-32; Testimony)

3. Also on April 21, 2022, the Department's ASW conducted a 6-month review/assessment with Petitioner's provider. During this review, Petitioner's grandson/caregiver indicated that Brenda was conducting some of the personal care items for Petitioner, such as bathing, because he was not comfortable with it. The ASW informed Petitioner's grandson that this was not appropriate since Brenda was not a registered caregiver with the Department for Petitioner. (Exhibit A, p 33; Testimony)
4. On May 19, 2022, following the assessment, the ASW sent Petitioner a negative action notice indicating that the tasks of wound care and mobility were being removed from Petitioner's care plan. The notice informed Petitioner that if she began using the manual wheelchair again inside the home to let him know and some time for mobility could be added back. (Exhibit A, pp 21, 24, 29; Testimony)
5. On May 26, 2022, Petitioner called the ASW and asked that mobility and wound care be added back to her care plan because her grandson was not being paid enough. The ASW informed Petitioner that HHS cannot pay for tasks that are not being performed, but if those tasks were performed in the future Petitioner could ask for them to be added back to the care plan. The ASW did inform Petitioner, however, that he would increase the time for Petitioner's bowel program because it appeared she was approved for less time than normal. (Exhibit A, p 46; Testimony)
6. On May 26, 2022, the Department sent Petitioner a Service Approval Notice informing Petitioner about the new HHS authorization including increased time for the bowel program. (Exhibit A, pp 47-49; Testimony)
7. Also on May 26, 2022, Petitioner again spoke to the ASW, who explained in detail over 40 minutes how the HHS program worked and how Petitioner's caregivers could only be paid for tasks actually performed. (Exhibit A, p 50; Testimony)
8. On May 31, 2022, the ASW sent Petitioner a Negative Action Notice after Petitioner and her grandson/caregiver submitted agency invoices for March and April 2022 that were not acknowledged by the caregiver agency or the ASW. (Exhibit A, pp 54-61; Testimony). The ASW informed

Petitioner and the caregiver that this was considered fraud and an intentional program violation. (Exhibit A, p 51-52; Testimony)

9. On May 31, 2022, Petitioner submitted a Request for Hearing to the local office but said request was not received by the Michigan Office of Administrative Hearings and Rules until August 23, 2022. (Exhibit A, pp 6-13; Exhibit 1; Testimony)

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.
- Appropriate Program Enrollment Type (PET) code.
- 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).

Certification of Medical Need

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.

Either the DHS-54A or veterans administration medical form 10-10M are acceptable for individuals treated by a VA physician; see ASM 115, Adult Services Requirements.

Need 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) at a level 3 or greater to be eligible to receive Home Help services.

*Adult Services Manual 105
June 1, 2020, pp 1, 3
Emphasis added*

ASM 115 ADULT SERVICES REQUIREMENTS

MDHHS-5534, ADULT SERVICES COMPREHENSIVE ASSESSMENT

The ASW must conduct a face-to-face interview with the client in their home to assess the personal care needs. During the assessment, 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 for the review.

*Adult Services Manual 115
September 1, 2021, 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 that on April 21, 2022, he conducted a 6-month review/assessment with Petitioner via telephone (due to the COVID-19 pandemic). The ASW indicated that he reviewed Petitioner's ADL's and IADL's and that Petitioner informed him that she completed mobility on her own in her electric wheelchair but needed help in and out of the chair. The ASW testified that he informed Petitioner that this would be considered transferring, not mobility. The ASW also indicated that Petitioner informed him that she was not currently receiving any wound care. The ASW testified that on April 21, 2022, he also conducted a 6-month review/assessment with Petitioner's provider, who did not raise any issues with Petitioner's care. The ASW indicated that on May 19, 2022, following the assessment, he sent Petitioner a negative action notice indicating that the tasks of wound care and mobility were being removed from Petitioner's care plan and that the notice informed Petitioner that if she began using the manual wheelchair again inside the home to let him know and some time for mobility could be added back.

The ASW testified that on May 26, 2022, Petitioner called the ASW and asked that mobility and wound care be added back to her care plan because her grandson was not being paid enough. The ASW indicated that he informed Petitioner that HHS cannot pay for tasks that are not being performed, but if those tasks were performed in the future Petitioner could ask for them to be added back to the care plan. The ASW testified that he did inform Petitioner, however, that he would increase the time for Petitioner's bowel program because it appeared she was approved for less time than normal. The ASW testified that on May 26, 2022, he sent Petitioner a Service Approval Notice informing Petitioner about the new HHS authorization including increased time for the bowel program. The ASW testified that on May 26, 2022, he also spoke to Petitioner again and explained in detail over 40 minutes how the HHS program worked and how Petitioner's caregivers could only be paid for tasks actually performed.

The ASW further testified that on May 31, 2022, he sent Petitioner a Negative Action Notice after Petitioner and her grandson/caregiver submitted agency invoices for March and April 2022 that were not acknowledged by the caregiver agency or the ASW. The ASW testified that he informed Petitioner and the caregiver that this was considered fraud and an intentional program violation.

Petitioner testified that she submitted her request for hearing in May 2022 so she could not understand why it was not received by MOAHR until August 23, 2022. Petitioner indicated that regarding mobility, she informed the ASW that she still sometimes used the manual wheelchair on the weekends so her time for mobility should not have been

cut completely. Petitioner testified that regarding wound care, she does wear Depends daily so needs to have cream applied to prevent irritation. Petitioner did admit that she currently does not have any open wounds.

Petitioner testified that two years ago she was getting over 210 hours of HHS per month and now it is down to 180 hours. Petitioner indicated that because of the reductions, she must pay her grandson out of her own pocket for one night a month. Petitioner testified that she lives on a fixed income and does not have money for that. Petitioner indicated that she understands that HHS must go by the Time and Task, but the only way to hire a caregiver is per hours a day. Petitioner indicated that is why she asked for an increase in her bowel program, which can take up to three hours each time.

Petitioner testified that she was told to submit the invoices for March and April by the ASW's supervisor and there was no fraud. Petitioner indicated that her grandson works days and nights for her, and he was not paid in full for March and April 2022. Petitioner testified that she does not know what is going to happen to her if her hours keep getting cut. Petitioner indicated that she is afraid she will end up in a nursing home and she would like to stay in her own home. Petitioner noted that she cannot do anything herself and HHS does not allow enough time for her caregivers to complete her daily tasks.

Petitioner's daughter testified that her mother has been paralyzed for many years and while she can provide support, she also has a family of her own to care for. Petitioner's daughter indicated that the new ASW came when the old ASW was on maternity leave and they have asked that the old ASW be reinstated. Petitioner's daughter also noted that due to COVID, the new ASW has not even met her mother in person. Petitioner's daughter indicated that he needs to come to the home and observe how long it actually takes caregivers to care for her mother. Petitioner's daughter also noted that on bathroom days it may take a couple of hours.

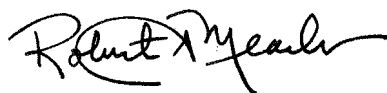
Based on the evidence presented, Petitioner has failed to prove by a preponderance of the evidence that the Department erred in authorizing her HHS. The ASW testified in a credible manner about Petitioner's answers to his questions during the reassessment and it is clear that Petitioner told him that she completes mobility on her own in her electric wheelchair and does not currently need wound care. While Petitioner testified at the hearing that she informed the ASW that she also uses her manual wheelchair, this is not supported by subsequent discussions she had with the ASW where she did not mention the manual wheelchair but instead just asked for mobility and wound care to be added back because her grandson was not being paid enough. Furthermore, the ASW actually increased Petitioner's HHS following the 6-month assessment by adding additional time for Petitioner's bowel program. Regarding Petitioner's caregiver's issues regarding not being fully paid in March and April 2022, that is clearly related to the fraudulent authorizations submitted by Petitioner and her caregiver. The record shows that Petitioner's caregiver was fully paid for all care that he actually performed in March and April 2022. Finally, as indicated above, policy indicates that it is the ASW that determines the level of HHS following the comprehensive assessment, not Petitioner or her caregiver. As such, the Department's ASW properly calculated Petitioner's 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 Petitioner's HHS.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.



RM/dh

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

