



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
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Date Mailed: October 26, 2022
MOAHR Docket No.: 22-003960
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

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 the Petitioner's request for a hearing.

After due notice, a telephone hearing was held on October 13, 2022. Petitioner and Petitioner's sister [REDACTED] appeared and testified. Florence Scott-Emuakpor, Appeals Review Officer, represented the Respondent, Michigan Department of Health and Human Services (DHHS or Department). Genia Boynton, Adult Services Worker, testified as a witness for the Department. Department Exhibit A, pp. 1-42 was received and admitted.

ISSUE

Did the Department properly deny Petitioner's Home Help Services (HHS) request?

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 was referred for HHS through the Department on July 19, 2022. (Exhibit A, page 11).
2. On August 1, 2022, Petitioner's physician Dr. Alani completed a Medical Needs form that certified a medical need for "bathing, transferring, taking medications, shopping, laundry, housework". (Exhibit A, page 42)
3. On August 25, 2022, the ASW completed a comprehensive assessment with Petitioner via telephone. (Exhibit A, page 14).

4. During the assessment, the ASW reported a need for assistance with IADLs, but also stated that she was independent in all Activities of Daily Living (ADLs) when asked about each specifically. (Exhibit A, page 14; Testimony of ASW).
5. On August 25, 2022, the Department sent Petitioner written notice that her request for HHS was denied because she did not qualify for HHS. (Exhibit A, page 7).
6. On September 12, 2022, the Michigan Office of Administrative Hearings and Rules (MOAHR) received the Request for Hearing filed in this matter with respect to that denial. (Exhibit A, page 9-11).

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.

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.

Adult Services Manual (ASM) 101 (4-1-2018) and ASM 120 (4-1-2021) address the issue of what services were included in HHS and how such services were assessed at the time of the action 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.

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 clients 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

As described in the above policy, an individual is only eligible to receive HHS in general, or with any IADLs, if he or she has a need for assistance with at least one ADL at a level 3 or greater on the functional scale.

In this case, the Department decided to deny Petitioner's request for HHS on the basis that Petitioner did not have a need for assistance with any ADLs at a level 3 or greater on the functional scale. Specifically, the ASW wrote in her notes that Petitioner did not report a need for assistance with any ADLs during the assessment.

In response, Petitioner testified that she did not tell the ASW that she did not need assistance with ADLs. Petitioner also testified that she requested that the ASW speak to her sister during the assessment and that did not happen. Petitioner and her sister testified that Petitioner sometimes needs encouragement for showering but not physical assistance. Petitioner questioned why her physician's statement on the medical needs form was not given weight over the ASW's determination that was based on the assessment completed on August 25, 2022.

Petitioner bears the burden of proving by a preponderance of the evidence that the Department erred in denying her request for HHS.

Given the available information and applicable policies in this case, Petitioner has failed to meet that burden of proof and the Department's decision must be affirmed. Petitioner did not disclose a need for assistance with any ADLs during the assessment and as provided above, an individual is only eligible to receive HHS in general, or with any IADLs, if he or she has a need for assistance with at least one ADL at a level 3 or greater on the functional scale. Department policy requires that the ASW complete an assessment and base her determination on the all the information available. The Medical Needs form identifies which activities should be looked at carefully but a physician checking on a box on the form is not controlling.

Petitioner does not meet the criteria for HHS and the Department's decision in this case must be affirmed.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED that:

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

AM/vc



Aaron McClintic
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
MDHHS-Home-Help-Policy@michigan.gov

DHHS-Location Contact

Sherry Reid
MDHHS - Oakman Adult Services
Detroit, MI 48202
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DHHS Department Representative

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Via First Class Mail:

Authorized Hearing Representative

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Petitioner

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