



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED] MI [REDACTED]

Date Mailed: March 23, 2023
MOAHR Docket No.: 23-000890
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Corey Arendt

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 the Petitioner's request for a hearing.

After due notice, a hearing was held on March 16, 2023. [REDACTED] Friend and Chore Provider, appeared on behalf of Petitioner. [REDACTED] Petitioner, appeared as a witness.¹ Desma Boyd, Appeals and Grievances Specialist, appeared on behalf of the Respondent Molina (Department). Dr. Keith Tarter, Senior Medical Director, appeared as a witness for the Department.

Exhibits:

Petitioner	None
Department	A – Hearing Summary

ISSUE

Did the MHP properly determine Petitioner's monthly allocation of personal care services?

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 receiving personal care services through the Department. (Exhibit A; Testimony).
2. Prior to January 20, 2023, Petitioner was approved for and received personal care services in the weekly amount of 20 hours and 30 minutes. (Exhibit A; Testimony.)

¹ [REDACTED] was not called by Mr. Jones to testify.

3. On November 30, 2022, the Department conducted a personal care assessment with Petitioner to determine the amount, scope, and duration of personal care services. (Exhibit A; Testimony.)
4. The assessment took place by telephone and was used to formulate a new reasonable time schedule for Petitioner's activities of daily living. During the assessment, the Petitioner reported changes in eating, bathing, grooming, transferring, mobility, shopping, laundry, and light house cleaning. (Exhibit A; Testimony.)
5. As a result of the assessment, Petitioner received increases in the areas of bathing, grooming, and mobility, and decreases in the areas of eating, shopping, laundry, and light housekeeping. The overall changes resulted in a decrease down to 18 hours and 15 minutes per week. (Exhibit A; Testimony.)
6. On December 16, 2022, the Department sent Petitioner a Notice of Denial of Medical Coverage. The notice indicated Petitioner's weekly Personal Care Services were being reduced from 20 hours and 30 minutes a week down to 18 hours and 15 minutes per week based on the results of the assessment and the reasonable time schedule used. (Exhibit A; Testimony.)
7. On or around December 23, 2022, the Petitioner requested an internal appeal of the December 16, 2022, decision. (Exhibit A.)
8. On January 20, 2023, the Department sent Petitioner a Notice of Appeal Decision. The notice indicated Petitioner's appeal was considered thoroughly, but that December 16, 2022, decision was affirmed. (Exhibit A; Testimony.)
9. On February 22, 2023, the Michigan Office of Administrative Hearings and Rules received from Petitioner, a request for hearing. (Exhibit A.)

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.

In 1997, the Department received approval from the Health Care Financing Administration, U.S. Department of Health and Human Services, allowing Michigan to restrict Medicaid beneficiaries' choice to obtain medical services only from specified Medicaid Health Plans. The Respondent is one of those MHPs, and as provided in the

Medicaid Provider Manual (MPM), is responsible for providing covered services pursuant to its contract with the Department:

The Michigan Department of Health and Human Services (MDHHS) contracts with Medicaid Health Plans (MHPs), selected through a competitive bid process, to provide services to Medicaid beneficiaries. The selection process is described in a Request for Proposal (RFP) released by the Office of Purchasing, Michigan Department of Technology, Management & Budget. The MHP contract, referred to in this chapter as the Contract, specifies the beneficiaries to be served, scope of the benefits, and contract provisions with which the MHP must comply. Nothing in this chapter should be construed as requiring MHPs to cover services that are not included in the Contract. A copy of the MHP contract is available on the MDHHS website. (Refer to the Directory Appendix for website information.)

MHPs must operate consistently with all applicable published Medicaid coverage and limitation policies. (Refer to the General Information for Providers and the Beneficiary Eligibility chapters of this manual for additional information.) Although MHPs must provide the full range of covered services listed below, MHPs may also choose to provide services over and above those specified. MHPs are allowed to develop prior authorization requirements and utilization management and review criteria that differ from Medicaid requirements. The following subsections describe covered services, excluded services, and prohibited services as set forth in the Contract.

1.1 SERVICES COVERED BY MEDICAID HEALTH PLANS (MHP'S) [CHANGE MADE 7/1/22]

The following services must be covered by MHPs:

- Ambulance and other emergency medical transportation
- Blood lead services for individuals under age 21
- Certified nurse-midwife services
- Certified pediatric and family nurse practitioner services
- Childbirth and parenting classes

- Chiropractic services
- Diagnostic lab, x-ray and other imaging services
- Durable medical equipment and medical supplies
- Emergency services
- End Stage Renal Disease (ESRD) services
- Family planning services
- Health education
- Hearing and speech services
- Hearing aids
- Home health services²

The Michigan Department of Health and Human Services Minimum Operating Standards for MI Health Link Program and MI Health Link HCBS Waiver indicates in relevant part with regard to Personal Care Services, the following:

Overview of Personal Care Services

Personal care is a Medicaid State Plan service provided in the MI Health Link program to address physical assistance needs and enable individuals to remain in their homes by avoiding or delaying the need for long term care in an institutional setting. These services are furnished to enrollees who are not currently residing in a hospital, nursing facility, intermediate care facility for persons with developmental disabilities or institution for mental illness and are provided in accordance with 42 CFR 440.167.

Personal care services are available to persons who require hands-on assistance in activities of daily living (ADLs): eating, toileting, bathing, grooming, dressing, mobility, and transferring, as well as direct assistance in instrumental activities of daily living (IADL), including personal laundry, light housekeeping, shopping, meal preparation and cleanup, and medication administration.

² Medicaid Provider Manual, Medicaid Health Plans, October 1, 2022, p 1.

Assessment and Reassessment Requirements

Initial Assessment

During the Level I Assessment, ICO Care Coordinators (or designee who meets the qualifications for an ICO Care Coordinator) must consider if the enrollee may need personal care services. If the ICO Care Coordinator believes the enrollee may be eligible for MI Health Link personal care services, the Care Coordinator will conduct the Personal Care Assessment. The ~~face-to-face~~, comprehensive assessment is the basis for determining and authorizing the amount, scope and duration and payment of services.

- The Personal Care Assessment will be completed ~~face to face~~ in the enrollee's place of residence.
- Assessment may also include an interview with the individual who will be providing personal care services or any persons the enrollee wishes to include.

Travel Time to Shop and Complete Laundry

Providers must be allowed to receive payment for travel time to shop for food, prescriptions, medical necessities and household items required specifically for the health and maintenance of the enrollee. Payment for travel cannot exceed the number of approved trips for these tasks. Travel time for laundry will be paid when the caregiver is required to travel away from a client's home or their own home to perform this task.

Individual providers may receive payments for travel time up to:

- 2 roundtrips each week for shopping.
- 2 roundtrips each week for laundry.

Travel time for shopping and laundry will be determined by the ICO at initial assessment and re-evaluated every six months. For enrollees currently receiving Personal Care Services, travel time for shopping and laundry will be determined during the next visit with the enrollee, but not later

than the next review. The amount of time approved by the ICO will be based on information obtained from the enrollee and the provider. Provider time needed to complete a client's laundry will be included with the time needed to travel to the nearest laundry facility. Provider time for shopping must be incurred in the local area where the client residence is located. ICOs must consider the member's wishes, dietary needs, religious and cultural preferences and beliefs, as well as other possible exceptions, when authorizing travel time for shopping.³

Pursuant to the above policy and its contract with the Department, the MHP has developed prior authorization requirements and utilization management and review criteria.

Pursuant to the above policies, the MHP reduced Petitioner's personal care services based on the answers provided during the November 30, 2022, assessment. During the assessment, Petitioner reported:

- She was able to feed herself after the food was prepared and cut into bite sized pieces.
- Able to wipe her face after a meal.
- **Reported two shopping trips a week.**⁴

Petitioner's arguments almost exclusively focused on shopping. Petitioner argued there were multiple trips a week to multiple stores that required more time than what was being allotted.

The testimony provided by the Petitioner's representative was not very convincing nor believable. However, the evidence provided by the Department indicated the Petitioner to have reported at least two shopping trips a week and the applicable policy allows up to two shopping trips a week. The Department, however, allocated only 1 shopping trip a week at 35 minutes. And the evidence provided did not clearly explain why a reduction occurred. Consequently, the Department's decision to reduce the Petitioner's personal care services should be reversed.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department improperly reduced Petitioner's personal care services.

³ MI Health Link Minimum Operating Standards for MI Health Link Program and MI Health Link HCBS Waiver, Version 11, February 1, 2023, pp 15,16, 27.

⁴ Exhibit A, p 10.

IT IS THEREFORE ORDERED that:

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

The Department is ordered to initiate the redetermination of personal care services for Petitioner.

CA/pe



Corey Arendt
Administrative Law Judge
for Elizabeth Hertel, Director
Department of Health and Human Services

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:

Petitioner

[REDACTED]

[REDACTED] MI [REDACTED]

[REDACTED]

DHHS Department Contact

CCC, 7th Floor

Lansing, MI 48919

MDHHS-MCPD@michigan.gov

Community Health Representative

Molina Healthcare of Michigan

c/o Lisa Johnson

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