



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 14, 2023
MOAHR Docket No.: 23-003039
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 the Petitioner's request for a hearing.

After due notice, a telephone hearing was held on July 6, 2023. Petitioner appeared and testified on his own behalf. Florence Scott-Emuakpor, Appeals Review Officer, represented the Respondent Department of Health and Human Services (DHHS or Department). Jessica Quintana, Adult Services Worker (ASW), and Patsy Clark, Adult Services Supervisor, testified as witnesses for the Department.

During the hearing, Petitioner's request for hearing was entered into the record as Exhibit #1, pages 1-7.

The Department also offered an evidence packet and video as proposed exhibits, but neither was admitted. The Department had not sent Petitioner a copy of the video and, while it had sent Petitioner a copy of the packet, Petitioner stated he did not have it and the undersigned Administrative Law Judge determined that the matter could proceed without it given the available testimony. At the close of the hearing, the Department's representative confirmed that she had been fully able to present the Department's case without the evidence packet.

ISSUE

Did the Department properly decide to terminate Petitioner's Home Help Services (HHS)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material, and substantial evidence on the whole record, finds as material fact:

1. In 2021, Petitioner applied for HHS through the Department. (Testimony of ASW).
2. As part of his application for services, Petitioner submitted a medical needs form completed and signed by his doctor, in which the doctor certified Petitioner had a medical need for assistance; identified Petitioner's diagnoses as including paraplegia; checked that Petitioner is non-ambulatory; and indicated that Petitioner needed a wheelchair. (Testimony of ASW).
3. The ASW also assessed Petitioner over the telephone due to the ongoing COVID-19 pandemic, with Petitioner reporting that, among his other needs, he needed to use a wheelchair. (Testimony of ASW).
4. In April of 2021, Petitioner was approved for HHS. (Testimony of ASW).
5. The Department also approved HHS again following later reviews, all by telephone, based on Petitioner's reports. (Testimony of ASW).
6. While Petitioner was approved for HHS, the ASW also filed a complaint with the Department's Office of Inspector General (OIG) after seeing a news article discussing Petitioner's criminal case and the order to pay restitution to his insurance company. (Testimony of ASW).
7. Specifically, Petitioner has been charged with receiving and concealing stolen property. (Testimony of Petitioner; Testimony of ASW).
8. A complaint against Petitioner for insurance fraud was also filed by Petitioner's insurance company with the Department of Insurance and Financial Services (DIFS). (Testimony of Petitioner).
9. Petitioner's criminal case was resolved by a plea agreement, and, as part of that agreement, Petitioner agreed to pay over \$750,000 in restitution to his insurance company. (Testimony of Petitioner).
10. During its subsequent investigation, the OIG obtained videos displaying Petitioner walking independently on September 13, 2022; October 7, 2022; and November 3, 2022. (Testimony of ASW).
11. On May 22, 2023, the Department sent Petitioner written notice that his HHS would be terminated because he failed to meet the eligibility requirements for such services. (Exhibit #1, pages 3-4).

12. On June 5, 2023, the Michigan Office of Administrative Hearings and Rules (MOAHR) received the request for hearing filed in this matter regarding the decision to terminate Petitioner's HHS. (Exhibit #1, pages 1-7).
13. Following the request for hearing, the ASW and Adult Services Supervisor conducted an in-person assessment with Petitioner in his home. (Testimony of Petitioner; Testimony of ASW).
14. The Department subsequently sent Petitioner another written notice stating that his HHS were to be terminated because the OIG investigation, including the video evidence, had demonstrated that Petitioner's actual needs were inconsistent with the medical needs form and functional assessment. (Testimony of ASW).

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 (5-1-2023) 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* 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 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 IADLs 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 in MiAIMS. 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* 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 handheld 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. Prior to performing complex care tasks, some conditions may also require special treatment and/or equipment instructions provided by the client or a health care professional, for example:

- 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

Additionally, regarding alleged fraud by a program participant, ASM 166 (10-1-2020) states in part:

Intentional Program Violation (IPV) occurs when the client, individual caregiver, agency provider, or client's authorized representative intentionally make a false or misleading statement, hides, or misrepresents/withholds facts to receive

or to continue receiving benefits. IPV is considered fraud and must be reported to the Michigan Department of Health and Human Services (MDHHS) Office of Inspector General (OIG).

Client Suspected of Intentional Program Violation (IPV)

Suspected IPV means an overpayment exists when all three of the following conditions occur:

- The client (or legally responsible party) **intentionally** failed to report information or gave incomplete or inaccurate information needed to make a correct benefit determination.
- The client was clearly instructed regarding his or her reporting responsibilities to the Department.

Note: A signed DHS-390, Adult Services Application instructs the client of their reporting responsibilities. The adult services worker (ASW) must reiterate the client's responsibility to report any changes **within 10 business days** during the client case reviews.

- The client has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill their reporting responsibilities.

An IPV is suspected when there is credible evidence that the client has **intentionally** withheld or misrepresented information for the **purpose** of establishing, maintaining, increasing, or preventing reduction of program benefits or eligibility. In such cases where these conditions exist, the ASW must make a fraud referral to the OIG.

Example: The client (or legally responsible party) intentionally reports inaccurate or incomplete information to conduct an accurate comprehensive assessment of need for Home Help services.

No recoupment action is taken on cases that are referred to OIG for investigation, while the investigation is being conducted.

Here, while there has been an OIG investigation into Petitioner and allegations of fraud made against him, no IPV action or recoupment is at issue. Instead, the sole issue is the Department's decision to terminate Petitioner's HHS pursuant to the above policies and on the basis that he does not meet the eligibility requirements for the HHS.

In appealing that decision, Petitioner bears the burden of proving by a preponderance of the evidence that the Department erred.

Given the evidence in this case, the undersigned Administrative Law Judge finds that Petitioner has failed to meet his burden of proof and that the Department's decision must therefore be affirmed.

As described in the above policy, an individual is only eligible to receive HHS if he or she has a need for assistance with at least one ADL at a level 3 or greater on the functional scale; and, while the Department previously found that Petitioner had such a need, that finding was based on false reports made by Petitioner.

For example, while Petitioner reported that he was a paraplegic and required the use of a wheelchair, the Department discovered multiple videos taken during the last year in which Petitioner walked independently.

Additionally, the Department further discovered that Petitioner's insurance company had filed a fraud complaint against him with DIFS and Petitioner was now paying over \$750,000.00 in restitution to that insurance company.

Petitioner's inconsistent testimony in response to the Department's findings also lacked credibility and was unpersuasive.

For example, while Petitioner testified at various times that he never viewed the videos in question, he cannot recall if he viewed the videos or that he has seen shots from the videos, he also testified that the person walking in the videos could be him and that he is not challenging the authenticity of the videos. According to Petitioner's testimony, he can walk if he wears a leg brace and overloads on his medications, but he pays for it physically afterward and stopped doing it years ago. However, Petitioner undisputedly never reported such abilities or past walking to the ASW, which is itself a misrepresentation, and the videos were all taken within the last year, which completely contradicts Petitioner's testimony.

Additionally, while Petitioner initially testified that he had been ordered to pay over \$750,000.00 in restitution as part of a civil suit that he was never notified of and had no opportunity to challenge; with the insurance company receiving a default judgment, he ultimately conceded during his testimony that he agreed to pay the restitution as part of the plea agreement in his criminal case. That plea agreement also weighs heavily against Petitioner's claims that the insurance company's complaints went nowhere; that Petitioner's criminal case did not involve allegations of insurance fraud; and that Petitioner had misrepresented medical conditions.

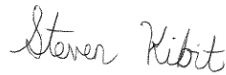
Petitioner may have significant medical issues, but he has failed to show that the Department erred in finding that he had misrepresented those issues in the past, or, determining that Petitioner did not meet the requirements for HHS now. Accordingly, the Department's decision should be affirmed.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED that:

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



SK/sj

Steven Kibit
Administrative Law Judge

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

PROOF OF SERVICE

I certify that I served a copy of the foregoing document upon all parties, to their last known addresses in the manner specified below, this 14th day of July 2023.

S. James

S. James

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