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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.: 23-003104
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 11, 2023. [REDACTED] appeared and testified on behalf of Petitioner, [REDACTED] (Petitioner). Petitioner, with her representative translating for her, also testified as a witness.¹ Allison Pool, Appeals Review Officer, represented the Respondent, Department of Health and Human Services (DHHS or Department). Genia Boynton, Adult Services Worker (ASW), and Vivian Hurst, Adult Services Supervisor, testified as witnesses for the Department.

During the hearing, the Department submitted an evidence packet that was admitted into the record as Exhibit A, pages 1-43. Petitioner did not submit any exhibits.

ISSUE

Did the Department properly deny in part Petitioner's request for 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. Petitioner is a [REDACTED] year-old Medicaid beneficiary who was referred for HHS through the Department on March 15, 2023. (Exhibit A, page 16).

¹ An interpreter provided by Respondent was initially utilized for Petitioner, but Petitioner's representative subsequently determined that the remainder of the hearing did not need to be translated. Respondent's representative also did not have any objection to Petitioner's representative translating Petitioner's answers to questions asked of her by Respondent or the undersigned Administrative Law Judge.

2. As part of her application, Petitioner submitted a medical needs form completed by her medical provider. (Exhibit A, page 10).
3. In that medical needs form, Petitioner's medical provider certified that Petitioner has a medical need for assistance with personal care activities circling all Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADLs) listed on the form. (Exhibit A, page 10).
4. On April 24, 2023, the ASW completed a comprehensive assessment with Petitioner via telephone, with an interpreter being utilized as Petitioner does not speak English. (Exhibit A, page 19).
5. During the assessment, Petitioner reported a need for assistance with her all ADLs and IADLs. (Testimony of ASW).
6. However, Petitioner could not explain why she needed help with any ADLs or what specifically prevented her from completing those tasks on her own. (Testimony of ASW).
7. On May 23, 2023, the Department sent Petitioner written notice that, effective April 29, 2023, she was approved for 11 hours and 6 minutes of HHS per month. (Exhibit A, pages 11-12).
8. Specifically, Petitioner was approved for assistance with housework 30 minutes per day, 1 day per week (2:09 per month); assistance with laundry 30 minutes per day, 1 day per week (2:09 per month); assistance with meal preparation 20 minutes per day, 3 days per week (4:18 per month) assistance with shopping 30 minutes per day, 1 day per week (2:09 per month); and assistance with travel for shopping 5 minutes per day, 1 day per week (21 minutes per month). (Exhibit A, page 12).
9. That approved assistance with IADLs was prorated in one-half because another adult was living in Petitioner's home at that time. (Testimony of ASW).
10. On June 7, 2023, the Michigan Office of Administrative Hearings and Rules (MOAHR) received the request for hearing filed in this matter with respect to that decision, with Petitioner disputing that amount and types of services that had been approved. (Exhibit A, pages 7-12).

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.

ASM 101, pages 1-3, 4-5

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...

* * *

Time and Task

The ASW will allocate time for each task assessed at 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 tab within MiAIMS for each task. ASW's should modify how much time is needed based on the client's documented need.

MiAIMS includes a functional assessment time based on the ASW's assessment of the client's needs. MiAIMS also has a provider time and task based on the client's choice of activities and frequency to be performed by their chosen provider. The client functional assessment summary may be different from the provider time and task due to client choice or provider availability. The client's functional assessment summary indicates the maximum approved time based on the client's assessed need. Upon client request, the provider authorization may exceed the provider time and task, but may not exceed the client functional assessment. The ASW should document the reason for the variance from the provider time and task in the payment rationale box in MiAIMS.

Note: This allows flexibility for client choice while also assuring the basic needs of the client are being met. The caregiver must correctly document which tasks they are performing.

Example: Miss Smith has been assessed to need bathing assistance. However, she does not want her caregiver or agency provider to assist her with bathing. Miss Smith continues to do bathing on her own with difficulty. Miss Smith's functional assessment summary will have bathing allocated, but bathing will not be included in her provider's time and task.

An assessment of need, at a ranking of 3 or greater, does not automatically guarantee the suggested allotted time allowed by the RTS. **The ASW must assess each task according to the average time and frequency required for its completion.**

Example: On a good day, it takes the caregiver or agency provider 10 minutes to dress Miss Jones. On a bad day, when Miss Jones is in a lot of pain, it can take the caregiver or agency provider 20 minutes to assist Miss Jones with dressing. The average daily time needed is 15 minutes. Therefore 15 minutes is what is entered in the time and task.

Example: Sally is assessed needing an average of 20 minutes a day for bathing and reports frequency of 4 days a week. However, one day during the week, Sally was not feeling well and decided to skip her bath. The next day the caregiver assisted Sally with bathing in the morning and in the evening, due to illness. Both bathing activities totaled 20 minutes each. The frequency shows the caregiver only completed three days of bathing due to documentation restrictions. However, the caregiver assisted in four bathing occurrences during that week with one day having completed two baths.

Note: It is important to understand that each day a client may have different needs due to their health restrictions. Therefore, the average time and frequency may vary due to changes in the client's needs.

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.

Note: This does not include situations where others live in adjoining apartments/flats or in a separate home on shared property and there is no shared, common living area.

In shared living arrangements, where it can be **clearly** documented that IADLs for the eligible client are completed separately from others in the home, hours for IADLs do not need to be prorated.

Example:

- Client has special dietary needs and meals are prepared separately.
- Client is incontinent of bowel and/or bladder and laundry is completed separately.
- Client's shopping is completed separately due to special dietary needs and food is purchased from specialty stores, etc.
- Caregiver does not live with the client and completes the client's laundry, shopping, and meal preparation separately from the client's roommate. The client's roommate does their own laundry, shopping, and meal preparation, therefore, these IADLs are not prorated because the client is the only person benefiting from the service. However, housework is prorated as it is a common living area.

ASM 120, pages 2-9

Pursuant to the above policies, the Department approved Petitioner for 11 hours and 6 minutes of HHS per month. Specifically, Petitioner was approved for assistance with

housework 30 minutes per day, 1 day per week (2:09 per month); assistance with laundry 30 minutes per day, 1 day per week (2:09 per month); assistance with meal preparation 20 minutes per day, 3 days per week (4:18 per month) assistance with shopping 30 minutes per day, 1 day per week (2:09 per month); and assistance with travel for shopping 5 minutes per day, 1 day per week (21 minutes per month).

In appealing that decision, Petitioner bears the burden of proving by a preponderance of the evidence, that the Department erred. Moreover, the undersigned Administrative Law Judge is limited to reviewing the Department's decision in light of the information it had at the time it made the decision.

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.

Here, the ASW credibly described the rankings she made and the time and task she generated from those rankings based on what was reported during the assessment. In particular, she noted that Petitioner was living in a shared living arrangement at that time and, consequently, the assessed hours for approved assistance with IADLs had to be prorated by one half.

In response, Petitioner generally testified that she needs assistance with more tasks and more assistance with the tasks she is approved for already, with her representative similarly testifying as a representative of her provider that she needs more care.

However, the undersigned Administrative Law Judge is limited to reviewing the Department's decision in light of the information it had at the time it made the decision and Petitioner's representative was not present during the assessment.

Moreover, while it is undisputed that Petitioner reported additional needs during the initial assessment, the ASW credibly testified that Petitioner failed to explain why more assistance was needed, and Petitioner, who testified that she has memory problems, failed to rebut that testimony during the hearing. And, while the undersigned Administrative Law Judge appreciates that there may have been communication difficulties due to the need for an interpreter, Petitioner cannot just assert that she needs assistance without more information. It is also undisputed that another adult was living in the home at the time of the approval.

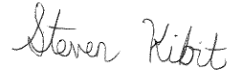
To the extent Petitioner has additional or updated information to provide regarding her need for assistance, then she can always request additional services again in the future. With respect to the decision at issue in this case however, the Department's decision must be affirmed given the available information and applicable policies.

DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, decides that the Department properly denied in part Petitioner's request for 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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