



GRETCHEN WHITMER
GOVERNOR

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

MARLON I. BROWN, DPA
ACTING DIRECTOR

[REDACTED]
[REDACTED] MI [REDACTED]

Date Mailed: November 22, 2023
MOAHR Docket No.: 23-006204
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 Petitioner's request for a hearing.

After due notice, a telephone hearing was held on November 7, 2023. [REDACTED] Petitioner's aunt, appeared and testified on Petitioner's behalf. Leigha Klaver, Appeals Review Officer, represented the Respondent Department of Health and Human Services (DHHS or Department). Brigeda Nelson, Adult Services Worker (ASW), testified as a witness for the Department.

During the hearing, the Department submitted a proposed exhibit that was admitted into the record without objection as Exhibit A, pages 1-120. No other proposed exhibits were submitted by either party.

ISSUE

Did the Department properly reduce 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. Petitioner is a [REDACTED] year old Medicaid beneficiary who has been diagnosed with autism spectrum disorder. (Exhibit A, pages 15, 22).
2. In 2010, he was approved for HHS through the Department. (Exhibit A, page 14).
3. As of November 1, 2022, Petitioner was approved for 25 hours and 35 minutes per month of HHS. (Exhibit A, page 21).
4. However, at some point Petitioner's services stopped. (Testimony of

ASW).

5. A notice of termination was also sent out, but Petitioner's case was never closed. (Exhibit A, pages 14, 30; Testimony of ASW).
6. On July 10, 2023, the ASW sent Petitioner notice of a home visit scheduled for August 1, 2023. (Exhibit A, page 32).
7. On August 1, 2023, the home visit was conducted as scheduled. (Exhibit A, pages 33-34).
8. During that visit, the ASW determined that Petitioner's home help provider was also providing him with Community Living Supports (CLS) authorized through the local Community Mental Health Services Program (CMHSP). (Exhibit A, page 33).
9. On September 6, 2023, the Department sent Petitioner written notice that, effective August 8, 2023, Petitioner was approved for 12 hours and 28 minutes per month of HHS. (Exhibit A, page 9).
10. In calculating how much HHS were to be approved, the ASW took into account Petitioner's CLS and reduced the amount of HHS that would have been approved based on the CLS services Petitioner was receiving. (Testimony of ASW).
11. On October 4, 2023, the Michigan Office of Administrative Hearings and Rules (MOAHR) received the request for hearing filed in this matter regarding the amount of Petitioner's HHS that was approved. (Exhibit A, pages 7-13).

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) addresses the issue of what services are included in HHS and how such services are assessed, stating 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

Additionally, regarding the coordination of HHS with other services, ASM 125 states in part:

PARTNERSHIPS

The adult services worker (ASW) has a critical role in developing and maintaining partnerships with community resources. To facilitate these partnerships the adult services worker will:

- Advocate for programs to address the needs of clients.
- Emphasize client choice and quality outcomes.
- Encourage access and availability of supportive services.
- Work cooperatively with other agencies to ensure effective coordination of services.
- Coordinate available resources with Home Help services in developing a plan of care that addresses the full range of client needs.

The Medicaid State Plan program for personal care services is Home Help. Medicaid (MA) also includes several other programs, listed below, with personal care services. ASWs should be familiar with each of the programs to help clients understand what resources are available to them.

COMMUNITY MENTAL HEALTH (CMH)

Many clients are eligible to receive both, Home Help services and mental health services through the local Community Mental Health Services Programs (CMHSPs) or Prepaid Inpatient Health Plans (PIHPs). ASWs should contact their local CMH for procedures on how to obtain protected client information for mutual clients.

Clients who live in unlicensed settings where Home Help services may be provided include:

- Own home/apartment, either living alone or with roommates or relatives. Client's name is on the lease or mortgage.
- Home of a family member.
- Supported independent setting (formerly called SIP homes). The lease is held by an individual that is **not** also the individual caregiver or agency provider/caregiver of other services such as Home Help.

Note: The instrumental activities of daily living (IADLs) in shared living arrangements must be divided by one half unless justified.

Community Living Supports (CLS)

Clients eligible for Home Help services authorized by the adult services worker may also receive Community Living Supports (CLS) authorized through the local Community Mental Health Services Programs (CMHSPs) or Prepaid Inpatient Health Plans (PIHPs). Community Living Supports services cannot **duplicate** or **replace** Home Help services. *Clients who are seeking personal care services and are eligible to receive both programs, must first apply for Home Help services as Home Help is the first payer.*

The client's plan should clearly identify where Home Help and Community Living Supports are **complementary**. The ASW determines the need for services based on the MDHHS-5534, Adult Services Comprehensive Assessment. If the client is receiving the maximum authorized through Home Help and still needs additional hands-on assistance with some ADLs and/or IADLs in order to remain at home, Community Living Supports services may be used to provide that additional direct physical assistance which exceeds the cost of care determined by the Michigan Department of Health and Human Services (MDHHS) comprehensive assessment.

Unlike Home Help, which only provides direct hands-on assistance with ADLs and IADLs, Community Living Supports services typically are used for skill development or supervision. In such situations, the use of both Home Help and Community Living Supports is permitted as the services are **different** and **not a duplication**.

The Community Living Supports services may not supersede or replace Home Help services. The client must exhaust all available services under Home Help before seeking Community Living Supports.

*ASM 125, pages 1-2
(italics added for emphasis)*

Here, as discussed above, the Department reduced Petitioner's HHS when reauthorizing his services due to his receipt of CLS, with the ASW specifically testifying that she took Petitioner's CLS services into account and reduced the amount of HHS that would have been approved based on the CLS services Petitioner was receiving.

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 that was available at the time the decision was made.

Given the record and applicable policies in this case, Petitioner has met that burden of proof and the Department's decision must therefore be reversed.

Petitioner is receiving both HHS and CLS, and the above policy provides that those services cannot duplicate each other. However, the above policy also expressly provides that Home Help is the first payer and that a client must exhaust all available services under Home Help before seeking CLS.

Accordingly, while Petitioner's CLS may need to be reduced by the local CMHSP and the Department should coordinate with that agency, the Department cannot reduce Petitioner's HHS based on what CLS he is also receiving, as Home Help is the first payer and those services need to be exhausted first. The Department should approve whatever HHS necessary and appropriate regardless of any CLS services.

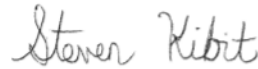
DECISION AND ORDER

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

IT IS, THEREFORE, ORDERED that:

- The Department's decision is **REVERSED**, and it must initiate a reassessment of Petitioner's HHS.

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 22nd day of November 2023.

S. James

S. James

**Michigan Office of Administrative
Hearings and Rules**

Via Electronic Mail:

Agency Representative

Leigha Klaver
MDHHS Appeals Section
235 S Grand Ave
Lansing, MI 48933
Klaverl@michigan.gov

DHHS Department Contact

Michelle Martin
MDHHS
Lansing, MI 48933
**MDHHS-Home-Help-
Policy@michigan.gov**

DHHS Location Contact

Sherry Reid
MDHHS-Greenview Adult Services
Detroit, MI 48219
**MDHHS-WC-
MAHSHearing@michigan.gov**

DHHS Department Representative

Mary Carrier
MDHHS Appeals Section
Lansing, MI 48909
MDHHS-Appeals@michigan.gov

Via First Class Mail:

Authorized Hearing Representative

[REDACTED]
[REDACTED] MI [REDACTED]

Petitioner

[REDACTED]
[REDACTED] MI [REDACTED]