



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
SUZANNE SONNEBORN
EXECUTIVE DIRECTOR

MARLON I. BROWN, DPA
ACTING DIRECTOR

Date Mailed: January 23, 2024
MOAHR Docket No.: 23-008273
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; 42 CFR 431.200 to 431.250; and 42 CFR 438.400 to 438.424, upon the Petitioner's request for a hearing.

After due notice, a hearing was held on January 16, 2024. [REDACTED] Authorized Hearing Representative, appeared on behalf of Petitioner. [REDACTED] Petitioner's mother and guardian, appeared as a witness for Petitioner. Emily Piggot, Appeals Review Officer, appeared at the hearing on behalf of Respondent, the Michigan Department of Health and Human Services (Department). Jennifer McEntire, Adult Services Worker, and Lori Dwyer, R.N., from Improve Health, appeared as witnesses for the Department.

Exhibits:

- | | |
|------------|---|
| Petitioner | 1. Adult Services Manual (ASM) 150 |
| | 2. State of Michigan Home Help Services (HHS) remittance advice |
| | 3. ASM 121 |
| | 4. ASM 120 |
| | 5. ASM 141 |
| | 6. ASM 101 |
| | 7. Miscellaneous emails |
| Department | A. Hearing Summary |

ISSUE

Did the Department properly decrease the amount of Petitioner's Home Help Services (HHS) benefit?

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 has been receiving HHS since at least 2015. (Exhibit A.)
2. Since at least 2015 and continuing up through August 22, 2023, Petitioner was approved for HHS in the amount of 293 hours and 28 minute a month. (Exhibit A; Testimony.)
3. On August 22, 2023, the Department conducted a six-month assessment with the assistance of Improve Health who reviewed the Petitioner's expanded home health services benefit. During the assessment, the Improve Health employee commented several times, the Petitioner should receive an increase in benefits due to the comments and statements reported as well as the increase in age and physical decline of Petitioner's provider. (Exhibit A; Exhibit 6; Testimony.)
4. On October 6, 2023, the Department notified Petitioner that the HHS benefit allocation would be reduced to 284 hours and 56 minutes per month effective August 22, 2023. (Exhibit A; Testimony.)
5. On November 15, 2023, the Department sent Petitioner an Advance Negative Action Notice. The notice indicated Petitioner's HHS benefits would be reduced to 285 hours and 26 minutes per month effective November 29, 2023. (Exhibit A; Testimony.)
6. On November 27, 2023, the Michigan Office of Administrative Hearings and Rules, received from Petitioner, a request for hearing. (Exhibit A.)
7. At all times relevant to this proceeding, Petitioner has not had a guardian or power of attorney. (Testimony.)

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 statute, 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.

The Adult Services Manual (ASM) address the issues of what services are included in Home Help Services and how such services are assessed:

ASM 101 AVAILABLE SERVICES

Payment Services Home Help

Home help services are non-specialized personal care service activities provided under the home help 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 worker.**

Home help 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) ranked 3 or higher or complex care need 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 if assessed at a level 3 or greater.¹

ASM 105 ELIGIBILITY CRITERIA

GENERAL

Requirements

Home help eligibility requirements include **all** of the following:

- Medicaid eligibility.
- Appropriate Program Enrollment Type (PET) code.
- Certification of medical need.
- Need for service, based on a complete comprehensive assessment indicating a functional limitation of level 3 or greater for at least one activity of daily living (ADL).

¹ Adult Services Manual 101, April 1, 2018, pp 1-2.

Certification of Medical Need

Medical needs are certified utilizing the DHS-54A, Medical Needs form and must be completed by a Medicaid enrolled medical professional. The medical professional must hold one of the following professional licenses:

- Physician (M.D. or D.O.).
- Physician Assistant.
- Nurse practitioner.
- Occupational therapist.
- Physical therapist.

Either the DHS-54A or veterans administration medical form 10-10M are acceptable for individuals treated by a VA physician; see ASM 115, Adult Services Requirements.

Need For Service

The adult services worker (ASW) is responsible for determining the necessity and level of need for Home Help services based on all of the following:

- Client choice.
- A completed MDHHS-5534, Adult Services Comprehensive Assessment. An individual must be assessed with at least one activity of daily living (ADL) at a level 3 or greater to be eligible to receive Home Help services.²

ASM 115 ADULT SERVICES REQUIREMENTS

MDHHS-5534, ADULT SERVICES COMPREHENSIVE ASSESSMENT

² Adult Services Manual 105, June 1, 2020, pp 1, 3.

The ASW must conduct a face-to-face interview with the client in their home to assess the personal care needs. During the assessment, complete the MDHHS-5534, Adult Services Comprehensive Assessment, which is generated from MiAIMS; see ASM 120, Adult Services Comprehensive Assessment.

CONTACTS

The ASW must, at a minimum, have a face-to-face interview with the client, prior to case opening, then every six months in the client's home for the review.³

ASM 120 ADULT SERVICES COMPREHENSIVE ASSESSMENT

OVERVIEW

The MDDHS-5534, Adult Services Comprehensive Assessment, is the primary tool for determining need for services. The comprehensive assessment must be completed on **all open Home Help services cases**. Michigan Adult Integrated Management System (MiAIMS), provides the format for the comprehensive assessment and all information must be entered on the computer program.

Functional Tab

The **Functional** Tab under **Assessment** module of MiAIMS is the basis for service planning and for the 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.

³ Adult Services Manual 115, May 1, 2023, pp 4, 5.

- 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 level 3 ranking or greater.

An individual must be assessed with at least one activity of daily living ranked 3 or higher or a complex care need 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 if assessed at a level 3 or greater.

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. 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 the Forms module in MiAIMS for assistance with activity ranking, frequency, and length of time needed per occurrence

Time and Task

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

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.⁴

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

⁴ Adult Services Manual 120, May 1, 2023, pp 1-7.

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.⁵

The Department had two witnesses present testimony regarding the assessment and reduction in benefits. One of the Department's witnesses (Ms. Dwyer) testified that following the scheduled quality review assessment, it was determined, based on Petitioner's needs, that there was a need to decrease the amount of HHS allocated to Petitioner. The Department provided Ms. Dwyer's notes of the assessment to show how this determination was made.

The other Department witness (Ms. McEntire) testified that during the assessment the other assessor, Ms. Dwyer, made comments regarding an increase in benefits being awarded based on the information being shared. Petitioner's witness corroborated this testimony by offering the same testimony.

What was mostly agreed on by each of the witnesses, is that Petitioner's conditions remained relatively stable, and that Petitioner's provider's health continued to deteriorate. What was confusing, however, is Ms. Dwyer's notes. The notes do not reflect the statements made during the assessment regarding a potential increase. This is troublesome because if in fact Ms. Dwyer made these statements, then these comments or at least the information being provided should have found their way into the notes.

Based on the evidence presented, I find the testimony of the Petitioner's Provider and Ms. McEntire to be slightly more persuasive and credible than that of Ms. Dwyer.

⁵ Adult Services Manual 125, February 1, 2022, pp 1-2.

Consequently, and based on the evidence presented, I find the Petitioner has met their burden to show the Department improperly determined Petitioner's HHS allocation.

DECISION AND ORDER

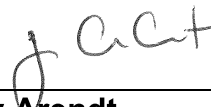
The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, finds that, based on the available information, the Department improperly determined Petitioner's HHS allocation.

IT IS THEREFORE ORDERED THAT:

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

The Department is ordered to set aside the November 15, 2023, Advance Negative Action Notice and perform a new assessment and issue retroactive benefits if otherwise eligible and qualified.

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:

Authorized Hearing Representative

[REDACTED]
[REDACTED] MI [REDACTED]
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