



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



Date Mailed: January 19, 2024
MOAHR Docket No.: 23-009048
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Robert J. Meade

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 Petitioner's request for a hearing.

After due notice, a hearing was held on January 17, 2024. [REDACTED] Petitioner, appeared and testified on her own behalf. [REDACTED] Petitioner's daughter, appeared as a witness. Allison Pool, Appeals Review Officer, appeared on behalf of Respondent, Michigan Department of Health and Human Services (MDHHS or Department). Tywonia Millender, Adult Services Worker (ASW), appeared as a witness for the Department.

ISSUE

Did the Department properly deny Petitioner's Home Help Services (HHS) application?

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 applied for HHS on [REDACTED] (Exhibit A, p 11; Testimony)
2. Petitioner is diagnosed with lumbago – low back pain, unspecified injury of head, and has had a prior stroke. (Exhibit A, p 12)
3. On November 16, 2023, the ASW completed a comprehensive assessment with Petitioner in Petitioner's home. During the assessment, the ASW determined that Petitioner did not have a need for hands on assistance with any Activities of Daily Living (ADL), functional ranking 3 or greater, or and Instrumental Activities of Daily Living (IADL's). The ASW also concluded that Petitioner had no complex care needs. The ASW noted that Petitioner came to and opened the door without the use of any type of adaptive equipment. The ASW also noted that Petitioner informed the ASW that she can complete all of her care on her own. (Exhibit A, p 14; Testimony)

4. A Medical Needs form completed by Petitioner's doctor indicates that Petitioner needs personal care assistance but does not specify which personal care activities Petitioner needs assistance with. (Exhibit A, p 15; Testimony)
5. On November 17, 2023, the ASW sent Petitioner a Negative Action Notice indicating that HHS was denied based on the policy requiring a need for hands on assistance with at least one ADL, functional ranking 3 or greater. (Exhibit A, p 9; Testimony)
6. On December 12, 2023, Petitioner's hearing request was received by the Michigan Office of Administrative Hearings and Rules. (Exhibit A, pp 7-8)

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 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.

Complex Care

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. The conditions may also require special treatment and equipment for which specific instructions by a health professional or client may be required in order to perform.

- Eating or feeding assistance.
- Catheters or leg bags.

- Colostomy care.
- Bowel program. • Suctioning.
- Specialized skin care.
- Range of motion exercises.
- Dialysis (In-home).
- Wound care.
- Respiratory treatment.
- Ventilators.
- Injections.

When assessing a client with complex care needs refer to the Complex Care Assessment MDHHS-5535 from MiAIMS

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.

*Adult Services Manual 101
April 1, 2018, pp 1-2, 5
Emphasis added*

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).

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.

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) in order to be eligible to receive Home Help services.

*Adult Services Manual 105
June 1, 2020, pp 1, 3
Emphasis added*

ASM 115 ADULT SERVICES REQUIREMENTS

MDHHS-5534, ADULT SERVICES COMPREHENSIVE ASSESSMENT

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, generated from MiAIMS; see ASM 120, Adult Services Comprehensive Assessment.

CLIENT AND PROVIDER CONTACTS

Within the Contacts module of MiAIMS, the following contact types are available:

- Face-to-face.
- Telephone.
- Miscellaneous.
- Email.
- Text.

- Case conference with supervisor.
- Narrative entry only.

The ASW must document all contacts between the ASW, client, provider, and collateral contacts in MiAIMS. The ASW must, at a minimum, have a face-to-face interview with the client, prior to case opening, and then every six months in the client's home for the review.

*Adult Services Manual 115
September 1, 2021, p 4*

ASM 120 ADULT SERVICES COMPREHENSIVE ASSESSMENT

OVERVIEW

The MDDHS-5534, Adult Services Comprehensive Assessment, is the primary tool for determining a client's need for services. The comprehensive assessment must be completed on **all open Home Help services cases**. The 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 the *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* 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 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.

*Adult Services Manual 120
April 1, 2021, pp 1-3
Emphasis added*

The ASW testified that on November 16, 2023, she completed a comprehensive assessment with Petitioner in Petitioner's home. The ASW indicated that during the assessment, she determined that Petitioner did not have a need for hands on assistance with any ADL, functional ranking 3 or greater, or any IADL's. The ASW also concluded that Petitioner had no complex care needs. The ASW noted that Petitioner came to and opened the door without the use of any type of adaptive equipment. The ASW also testified that Petitioner informed her that she can complete all her care on her own. The ASW indicated that Petitioner called her after the assessment and told her that the cane she uses was not prescribed by a doctor but that a friend gave it to her.

The ASW also indicated that a Medical Needs form completed by Petitioner's doctor indicates that Petitioner needs personal care assistance but does not specify which personal care activities Petitioner needs assistance with.

The ASW testified that based on the information available at the time of the assessment, she concluded that Petitioner did not have a medical need, functional ranking of 3 or higher, with any ADL, and had no complex care needs. The ASW indicated that on November 17, 2023, she sent Petitioner a Negative Action Notice indicating that HHS was denied based on the policy requiring a need for hands on assistance with at least one ADL, functional ranking 3 or greater, to qualify for HHS.

Petitioner testified that she is having trouble taking care of herself, including trouble bathing, completing basic chores, shopping, curling her hair, and personal hygiene. Petitioner indicated that her daughter helps her with just about everything and she would be lost without her. Petitioner testified that the ASW called her and said she would be there in an hour and a half, so she was unable to get her daughter there to assist her with the assessment. Petitioner indicated that when the ASW arrived, she was putting the dogs in the bedroom because the ASW indicated that she was allergic to dogs. Petitioner testified that the ASW basically told her when she arrived that Petitioner would not qualify for HHS because she was not using any adaptive equipment. Petitioner indicated that she was so upset and confused over that statement that she could not properly answer the questions the ASW asked. Petitioner testified that she felt like she was doomed before she even got interviewed. Petitioner indicated that she needs her daughter to help her as she has had a stroke and three closed head injuries. Petitioner also indicated that she is also having trouble with one of her eyes, so she cannot see very good. Petitioner testified that her grandkids also come over and help her a lot.

On cross-examination, Petitioner indicated that the cane she uses is a single prong cane, that she hardly ever uses it, and that a friend gave it to her. Petitioner indicated that she only uses the cane when she sleeps funny and wakes up in pain.

Petitioner's daughter testified that she helps Petitioner with her daily activities. Petitioner's daughter indicated that she helps Petitioner with her bathing and comes over once or twice a day to check on her. Petitioner's daughter testified that she does any type of house cleaning, and that Petitioner is not allowed to get into the shower without her there. Petitioner's daughter also indicated that she does Petitioner's hair. Petitioner's daughter testified that she is helping Petitioner more than ever now because of Petitioner's vision problems.

Based on the evidence presented, Petitioner has failed to prove, by a preponderance of the evidence, that the Department erred in denying the HHS application. The evidence was not sufficient to establish that Petitioner had a need for hands on assistance, functional ranking 3 or greater, with at least one ADL, based on the information available to the ASW for this assessment. The ASW provided credible, detailed testimony regarding her discussion of ADL's with Petitioner during the assessment and her observations of Petitioner. Petitioner was independent with mobility and used no adaptive equipment. Petitioner informed the ASW that she was independent with all her ADL's and Petitioner's doctor did not certify that Petitioner needed any assistance with any specific ADL's on the 54A medical needs form. Petitioner also has no complex care needs. And, while Petitioner testified at the hearing that she was upset and confused at the assessment, it appears, given the very detailed narrative provided by the ASW, that Petitioner was able to answer all the questions posed to her. Given the evidence here, the denial of Petitioner's HHS application was proper and must be upheld.

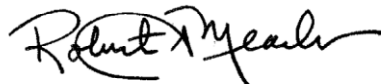
Petitioner can, however, reapply for HHS at any time.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly denied Petitioner's HHS application based on the available information.

IT IS THEREFORE ORDERED that:

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



Robert J. Meade

Administrative Law Judge

RM/sj

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

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 19th day of January 2024.

S. James

S. James

**Michigan Office of Administrative
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