



GRETCHEN WHITMER
GOVERNOR

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

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ACTING DIRECTOR

[REDACTED]
[REDACTED] MI [REDACTED]

Date Mailed: February 22, 2024
MOAHR Docket No.: 24-000007
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Marya Nelson-Davis

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 February 1, 2024. [REDACTED], Petitioner's authorized hearing representative (AHR) and caretaker, appeared and testified on behalf of Petitioner. [REDACTED] and [REDACTED] appeared as witnesses for Petitioner. Florence Scott-Emuakpor, Appeals Review Officer, appeared on behalf of the Department of Health and Human Services (Department). Kathy Nance (K.N.), Registered Nurse (RN); and Katrina Turner, Adult Services Supervisor, appeared as witnesses for the Department.

Exhibits:

Petitioner	None
Department	A – Hearing Summary Packet

ISSUE

Did the Department properly reduce Petitioner's Home Help Services (HHS) benefits?

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 has been receiving HHS at all times relevant to this matter.
2. Petitioner was diagnosed with a severe traumatic brain injury and quadriplegia, and he lives in a shared household.

3. Petitioner had been authorized to receive HHS assistance with the following activities: bathing, dressing, eating, grooming, mobility, toileting, transferring, housework, laundry, medication, meal preparation, shopping for food/meds, catheters or leg bags, range of motion exercises, and specialized skin care. Previously, the Department determined that the total amount of time needed to assist Petitioner with his functional activities was 159 hours and 14 minutes a month.
4. On November 2, 2023, a quality review video call assessment of Petitioner was conducted by K.N., an RN, who interviewed Petitioner's provider with the Department Adult Services Worker (ASW) present.
5. Based on the information obtained from Petitioner's documentation and information provided by Petitioner's caretaker during the video call assessment, the Department RN reduced the amount of time that Petitioner needs assistance with the following tasks:
 - Eating**-reduced from 44 min to 22 min daily.
 - Bathing**-reduced from 18 min to 15 min daily.
 - Dressing**-reduced from 25 min to 23 min daily.
 - Transferring**-reduced from 24 min to 8 min daily.
 - Mobility**-removed. It was noted that Petitioner has a wheelchair that is not used inside the home; Petitioner is ambulatory with a cane and hands-on-assistance from his provider; and although Petitioner needs assistance with ambulation for toileting and bathing, the time needed for assistance with those activities are accounted for under those tasks.
 - Range of Motion**-reduced from 45 min to 15 min daily.
 - Specialized Skin Care**-reduced from 20 min to 6 min.
 - Medication**-reduced from 10 min to 5 min.
6. On December 20, 2023, following the assessment, the Department sent Petitioner an Advance Negative Action Notice informing him that HHS will be reduced to 115 hours and 5 min a month.
7. On January 2, 2024, the Michigan Office of Administrative Hearings and Rules (MOAHR), received Petitioner's request for hearing protesting the HHS reduction.

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.

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.

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 IADL's 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 bath himself without the hands-on assistance of another. The adult services worker 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. This list is not all inclusive.

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 105 ELIGIBILITY CRITERIA

GENERAL

Requirements

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

- Medicaid eligibility.
- Appropriate Program Enrollment Type (PET) status.
- 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.

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.

ASM 115 ADULT SERVICES REQUIREMENTS

MDHHS-5534, ADULT SERVICES COMPREHENSIVE ASSESSMENT

Conduct a face-to-face interview with the client in their home to assess the personal care needs. 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, and then every six months in the client's home for the review.

ASM 120 ADULT SERVICES COMPREHENSIVE ASSESSMENT

OVERVIEW

The MDHHS-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 in the computer program.

Functional Tab

The Functional tab under the Assessment module in 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 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.

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.

In this case, Petitioner's AHR/caretaker requested a hearing on Petitioner's behalf because she disagrees with the Department's decision to reduce Petitioner's HHS or the HHS allocation. Petitioner's AHR bears the burden of establishing that Petitioner is entitled to a higher HHS allocation, and that the Department's decision to reduce Petitioner's HHS is contrary to the applicable law and policy.

The credible, material, and substantial evidence on the record establishes that the Department's RN completed a video call assessment of Petitioner with Petitioner's AHR/caretaker and the Department ASW present. The RN interviewed Petitioner's AHR/caretaker about the time it took to perform the HHS tasks that Petitioner needs assistance with and made detailed notes during the assessment. Petitioner's AHR/caretaker was given an opportunity to explain what HHS tasks Petitioner needs assistance with and the time it takes to perform those tasks. After the video call assessment and review of Petitioner's medical documentation, the RN determined that the time needed to assist Petitioner with eating, bathing, dressing, transferring, range of motion exercises, specialized skin care and medication assistance should be reduced. Also, the RN determined that Petitioner no longer needed assistance with mobility because Petitioner had a wheelchair that was not used inside the home; Petitioner was

ambulatory with a cane and hands-on-assistance from his provider; and although Petitioner needs assistance with ambulation for toileting and bathing, the time needed for assistance with those activities are accounted for under those tasks.

Petitioner's AHR/caretaker testified that she was caught off guard and took her best guess about the time it takes to assist Petitioner with his HHS activities, and she does not remember what she told the RN during the assessment. Petitioner's AHR/caretaker testified that currently she has more accurate data regarding the frequency and time needed for the tasks Petitioner needs assistance with.

Based on the review of the evidence on the record, I find sufficient evidence to affirm the Department's decision to reduce Petitioner's HHS. This 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. Petitioner's AHR did not meet her burden of establishing that the Department's decision to reduce Petitioner's HHS was improper and contrary to the applicable law and policy. If Petitioner's circumstances have changed, Petitioner has the option of notifying the Department of the changes and asking for a new HHS assessment based on updated information.

DECISION AND ORDER

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

IT IS, THEREFORE, ORDERED that the Department's decision is **AFFIRMED**.



MN-D/pe

Marya Nelson-Davis
Administrative Law Judge

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.

Via Electronic Mail:

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