



GRETCHEN WHITMER
GOVERNOR

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

MARLON BROWN
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: July 8, 2024
MOAHR Docket No.: 24-004375
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Steven Kibit

DECISION AND ORDER

This matter is before the Michigan Office of Administrative Hearings and Rules (MOAHR) and the undersigned Administrative Law Judge (ALJ) pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.*, and upon a request for a hearing.

After due notice, a telephone hearing began on May 15, 2024. However, the hearing was not completed on that day after Petitioner [REDACTED] (Petitioner) requested, and the ALJ approved, a continuance so that the Respondent Department of Health and Human Services (Department) could have an opportunity to review Petitioner's proposed exhibits.

After due notice, the hearing was continued and completed as scheduled on June 18, 2024.

Petitioner appeared and testified on her own behalf at the hearing. Lana Karadsheh, Appeals Review Officer, represented the Department, with Juanita Moore, Adult Services Worker (ASW), testifying as a witness for the Department.

During the hearing, the following exhibits were admitted into the record:

Petitioner's Exhibits:

- Exhibit #1: Fax dated May 14, 2024
- Exhibit #2: Evidence Packet
- Exhibit #3: 2:17 Recording of Phone Call between Petitioner and Adult Services Supervisor
- Exhibit #4: 2:21 Recording of Phone Call between Petitioner and Adult Services Supervisor
- Exhibit #5: 2:15 Recording of Phone Call between Petitioner, Home Help Provider, and Adult Services Supervisor

- Exhibit #6: 2:15 Recording of Phone Call between Petitioner, Home Help Provider, and Adult Services Supervisor
- Exhibit #7: 0:18 Recording of Voice Mail left by Petitioner
- Exhibit #8: 1:14 Recording of Recording of Phone Call between Petitioner and Adult Services Supervisor
- Exhibit #9: 2:09 Recording of Phone Call between Petitioner, Home Help Provider, and Adult Services Supervisor
- Exhibit #10: 1:49 Recording of Phone Call between Petitioner and Adult Services Worker
- Exhibit #11: 2:01 Recording of Phone Call between Petitioner and Adult Services Supervisor
- Exhibit #12: 2:01 Recording of Phone Call between Petitioner and ASW
- Exhibit #13: 1:09 Recording of Phone Call between Petitioner and ASW
- Exhibit #14: 2:04 Recording of Phone Call between Petitioner and ASW¹

Department's Exhibit:

- Exhibit A: Hearing Summary and Evidence Packet

ISSUES

Did the Department err in determining the start date and amount of Petitioner's approved Home Help Services (HHS)?

¹ The Department objected to the admission of Petitioner's recordings on the basis of a lack of foundation and relevancy, but, with the exception of one recording between Petitioner and her sister, the undersigned Administrative Law Judge overruled the objections and admitted the recordings, with the finding that the Department's objections went more to weight than foundation or relevancy.

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On November 17, 2023, Petitioner, a [REDACTED] year-old Medicaid beneficiary was referred for HHS through the Department. (Exhibit A, page 27).
2. She has been approved for HHS in the past, but her case closed in October of 2023. (Exhibit A, page 15; Testimony of Petitioner; Testimony of ASW).²
3. On December 7, 2023, the ASW completed an initial assessment with Petitioner in Petitioner's home. (Exhibit A, pages 34-35).
4. During that assessment, Petitioner reported having heart issues, including a heart attack earlier in the year. (Exhibit A, page 35).
5. The ASW noted Petitioner's diagnoses as including congestive heart failure; hypertension; sciatica; diabetes; and renal insufficiency. (Exhibit A, page 31).
6. Petitioner also reported being independent in eating; toileting; bathing; grooming; dressing; transferring; mobility, with the use of adaptive equipment; taking medications; and meal preparation. (Exhibit A, page 25).
7. Petitioner did report a need for assistance with shopping; laundry; and housekeeping. (Exhibit A, page 35).
8. Based on the assessment, the ASW determined that Petitioner should be approved for assistance with mobility; shopping, including travel for shopping; laundry; and housework. (Exhibit A, pages 28, 35; Testimony of ASW).
9. The total amount of HHS to be approved was 13 hours and 18 minutes of HHS per month. (Exhibit A, page 22; Testimony of ASW).
10. On January 8, 2024, the ASW met with Petitioner's proposed home help provider. (Exhibit A, page 33).
11. At that time, the home help provider was not enrolled in the Department's Community Health Automated Medicaid Processing System (CHAMPS) and did not have a provider identification number. (Exhibit A, page 33; Testimony of Petitioner; Testimony of ASW).

² Petitioner requested a hearing with respect to that case closure; an administrative hearing was held; and the Administrative Law Judge Corey Arendt affirmed the termination of services. See MOAHR Docket No. 23-008319. Only the subsequent reapproval of HHS is at issue in this case.

12. The ASW then advised the provider that he needed to enroll in CHAMPS, and to contact her when he had a provider identification number. (Exhibit A, page 33; Testimony of ASW).
13. The provider applied for enrollment, but he was denied. (Exhibit #2, page 19; Testimony of Petitioner).
14. He then appealed that denial. (Exhibit #2, page 24).
15. Prior to any hearing on the denial, Petitioner's provider's enrollment was approved, and he withdrew his request for hearing. (Exhibit #2, pages 22, 24; Testimony of Petitioner).
16. Petitioner's provider was also enrolled in CHAMPS effective April 11, 2024. (Exhibit A, page 24).
17. That same day, the ASW sent Petitioner a Services Approval Notice stating that Petitioner was approved for 13 hours and 18 minutes per month of HHS, with an effective start date of April 11, 2024. (Exhibit A, pages 22-23; Testimony of ASW).
18. On April 24, 2024, MOAHR received the request for hearing filed in this matter with respect to the start date and amount of Petitioner's approved HHS. (Exhibit A, pages 8-21).
19. That same day, the ASW received a new Medical Needs form completed by a medical provider with respect to Petitioner, with new diagnoses of shortness of breath and chronic obstructive pulmonary disease added. (Exhibit A, pages 26, 31).

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 are assessed. 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 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 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 hand-held 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.

* * *

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: A client needs assistance with cutting up food. The ASW would only pay for the average time required to cut the food.

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

Additionally, regarding Home Help Caregivers, ASM 140 (2-1-23) states in part:

Payment Authorizations

No payment can be authorized unless the individual caregiver has been enrolled and screened for criminal history in the Community Health Automated Medicaid Processing System (CHAMPS). Agency caregivers must also be enrolled in CHAMPS. In addition to enrolling in CHAMPS, a Home Help agency provider must be registered as a vendor with the State of Michigan by registering and updating their information online using the Statewide Integrated Governmental Management Applications (SIGMA) system at www.michigan.gov/SIGMAVSS.

If an agency provider is not registered with the State of Michigan, payments will not be processed.

Note: The caregiver enrollment instructions can be located on the Home Help website, www.michigan.gov/homehelp. For additional questions regarding caregiver enrollment in CHAMPS, refer caregivers to Provider Support Services at 1-800-979-4662.

ASM 140, page 2

Here, as discussed above, the Department approved Petitioner for 13 hours and 18 minutes per month of HHS effective April 11, 2024, with HHS approved for assistance with mobility; shopping, including travel for shopping; laundry; and housework.

Petitioner has now appealed that decision, arguing both that Petitioner's HHS should have an earlier start date and that they should have been approved in a greater amount.

In appealing, 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 available information and applicable policies in this case, Petitioner has failed to meet her burden of proof with respect to either of her claims, and the Department's decision must therefore be affirmed.

Start Date

With respect to the start date of Petitioner's HHS, the record demonstrates that the Department approved the services as of April 11, 2024, which was the date that Petitioner's home help provider was enrolled in CHAMPS, the Department's operating system. And, while Petitioner credibly testified that her provider was assisting her prior to April 11, 2024, ASM 140 expressly provides that no payment for HHS can be authorized until an individual caregiver has been enrolled and screened for criminal history in CHAMPS. See ASM 140, page 1.

Petitioner argues in response that the delay in enrollment was caused by the ASW, who allegedly failed to do what needed to be done to get the provider enrolled. However, the ASW has no role in the enrollment process, see ASM 135, and Petitioner's testimony to the contrary is unsupported by evidence or policy, with the Department having Provider Support Services to assist with enrollment.

Moreover, while it does appear that the provider's initial application for enrollment may have been improperly denied, with the Department approving the enrollment after he requested a hearing, any delay caused by that denial would still not change the applicable policy and both Petitioner and her provider knew that services were not yet authorized while the provider's appeal was pending.

Accordingly, as HHS cannot be paid for prior to a provider being enrolled in CHAMPS and Petitioner's chosen provider was not enrolled until April 11, 2024, the Department properly identified April 11, 2024, as the start date of Petitioner's HHS.

Amount

With respect to the amount of HHS that were approved, the record demonstrates that, pursuant to the above policies, the ASW conducted an initial comprehensive assessment; determined Petitioner's needs based on Petitioner's reports and documentation; and allocated time for each task identified at a rank of 3 or greater on the functional scale.

Petitioner argues in response that, in doing so, the ASW erred by basing the findings on outdated medical information and solely on Petitioner's diagnosis of sciatica. However, as found above, the record demonstrates that the ASW did document Petitioner's heart and kidney issues during the initial assessment. Moreover, while an Adult Services Supervisor may have stated during a subsequent telephone call that the only Medical Needs form he saw was from February of 2023, that statement is not persuasive on its own as it was given by someone not directly involved in the case; made during a brief review of Petitioner's file during a telephone conversation; and directly contradicted by the ASW's contemporaneous notes and credible testimony.

Petitioner also errs by focusing on the diagnoses, as neither the presence nor absence of a diagnosis, or even what the medical provider reports, is dispositive in how much HHS are approved. Instead, the ASW responsible for determining the necessity and level of need for HHS is based on client choice, the comprehensive assessment, and the Medical Needs form submitted. See ASM 105 (6-1-20), pages 3-4.

Moreover, while Petitioner broadly testified during the hearing as to the need for more services than what was authorized, her testimony is unsupported and much of the specific assistance she identified is not covered by HHS, such as transportation and lawn care.

To the extent Petitioner's needs have changed or she has additional information to report, she can always request more HHS in the future along with that information. 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.

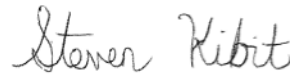
DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly determined the start date and amount of Petitioner's HHS.

IT IS, THEREFORE, ORDERED that:

The Department's action 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 8th day of July 2024.

S. James

S. James

**Michigan Office of Administrative
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