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
DIRECTOR

[redacted]
[redacted] MI [redacted]

Date Mailed: August 22, 2024
MOAHR Docket No.: 24-006758
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 August 14, 2024. [redacted] Petitioner, appeared on his own behalf. [redacted] appeared as a witness for Petitioner. Emily Piggott, Appeals Review Officer, appeared on behalf of the Department of Health and Human Services (Department). Ronda Henderson, Adult Services Worker; and Judy Gilbert, Adult Services Manager, appeared as witnesses for the Department.

Exhibits:

Petitioner	None
Department	A – Hearing Summary

ISSUE

Did the Department properly determine Petitioner's Home Help Services (HHS) benefit allocation?

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 or around September 28, 2018, Petitioner was approved for HHS. (Exhibit A.)

2. Petitioner suffers from arthritis, degenerative disc disease, limited mandibular range of motion and low back pain. (Exhibit A.)

3. On May 29, 2024, a face-to-face assessment was completed with Petitioner and Petitioner's Provider. During the assessment, Petitioner reported he is able to bath, dress, eat, groom, toilet, transfer, and ambulate without the need of hands-on assistance. Petitioner identified several pieces of equipment that assist him with some of these activities and further indicated he has his toenails trimmed at his nephew's barbershop. It was also identified Petitioner lives in a shared living arrangement and handles his own medications, and laundry facilities are on-site. Petitioner further indicated he can prepare some meals and goes shopping one day a week for groceries. (Exhibit A; Testimony.)

4. Prior to June 3, 2024, Petitioner was approved for 126 hours and 16 minutes a month in HHS. (Exhibit A; Testimony.)

5. On June 3, 2024, the Department sent Petitioner, an Advance Negative Action Notice. The notice indicated Petitioner's HHS would be reduced to 30 hours and 53 minutes a month effective June 17, 2024. The notice stated the following:

> Reviewed the functional assessment with [redacted] and [redacted] Bathing – [redacted] stated that he doesn't need assistance in the shower ad he utilizes his shower chair. He stated that she checks to make sure he gets in the shower. The ranking, days and time will be removed. Dressing – [redacted] stated that he is able to dress himself. The ranking, days and time will be removed. Eating – [redacted] stated that he is able to feed himself. This time is being removed from the time and task. Grooming – [redacted] stated that he is able to do his grooming himself. He reported that his nephew does his toenails at his Barber Shop. The ranking, days and time will be removed. Mobility – [redacted] stated that he utilizes his cane for mobility in his home. He denies needing any assistance with mobility. The ranking, days and time will be removed. Toileting – [redacted] stated that he is able to use the bathroom on his own. The ranking and time will be removed. Transferring – [redacted] stated that he is able to transfer form laying to sitting and sitting to standing on his own. He reported that it does take him a minute; but he is able to do it. The ranking, days and time will be removed. IADL's; Housework will be prorated (no change). Laundry is done at his home (no change). Travel time for laundry will be removed because the laundry is done at home. [redacted] handles his own medications, and this time will be removed from the time and task. Meal Prep, [redacted] stated that he can prepare some meals. He has a hard time standing for a long time. He stated that he needs help with

meals approximately three days a week. Meal Preparation will be decreased in days from 7 to 3 days per week. Shopping – [redacted] stated they shop for groceries once a week at so the days per week will be decreased form 2 times per week to 1 time per week. This will also decrease the travel time.[1]

6. On June 17, 2024, the Michigan Office of Administrative Hearings and Rules, received from Petitioner, a request for hearing. (Exhibit A.)

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

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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.

[1] Exhibit A, p 6.

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.

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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.[2]

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[2] Adult Services Manual (ASM) 101, Available Services, April 1, 2018, pp 1-5.

ASM 105 ELIGIBILITY CRITERIA

GENERAL

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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).

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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.[3]

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ASM 115 ADULT SERVICES REQUIREMENTS

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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.

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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.[4]

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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.

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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:

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[3] ASM 105, Eligibility Criteria, June 1, 2020, pp 1, 3.
[4] ASM 115, Adult Services Requirements, May 1, 2023, pp 4-5.

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.[5]

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In this case, it was indicated Petitioner was requesting a hearing because Petitioner disagreed with the Department's HHS reduction. Consequently, Petitioner bears the burden of showing the Petitioner is entitled to a higher allocation.

The testimony of the Department's witness was pretty straight forward and well detailed regarding the conversations that took place during the assessment and what was reported. The testimony was corroborated to some extent by the well detailed notes taken during/after the assessment as well as the negative action notice.

In response, Petitioner did not directly rebut the assessment, but rather, argued that what was reported was not always the case; and that he goes shopping two days a

[5] ASM 120, Adult Services Comprehensive Assessment, May 1, 2023, pp 1-3, 6-7.

week. One time for groceries and another time for personal items. Petitioner, however, did not explain what he meant by personal items or why the shopping couldn't have been done on one day.

Consequently, based on a review of the record, I find sufficient evidence to affirm the Department's HHS allocation in this case. If Petitioner's circumstances change or he feels there is additional information that needs to be shared, he is welcome to report those changes to the Department for consideration and assessment.

DECISION AND ORDER

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

IT IS, THEREFORE, ORDERED that:

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

CA/pe

Corey Arendt
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 (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:

Agency Representative
Emily Piggott
DCH Appeals Section
222 N. Washington Square
Lansing, MI 48909
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Via First Class Mail:

Petitioner
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