



STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

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

MARLON BROWN
DIRECTOR

Date Mailed: August 22, 2024
MOAHR Docket No.: 24-007675
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 telephone hearing was held on August 20, 2024. [REDACTED] Petitioner's daughter and authorized hearing representative appeared and testified on Petitioner's behalf. [REDACTED] Petitioner, appeared as a witness. Leigha Klaver, Appeals Review Officer, represented Respondent, Michigan Department of Health and Human Services (MDHHS or Department). Ronda Henderson, Adult Services Worker (ASW) and Judy Gilbert, Adult Services Supervisor, appeared as witnesses for the Department.

ISSUE

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

EXHIBITS

Exhibit A: Department's Hearing Summary, pp 1-67

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 October 2016. (Exhibit A, p 11; Testimony)
2. On May 31, 2024, the Department's ASW conducted a 6-month assessment with Petitioner and her provider in Petitioner's home. The ASW reviewed Petitioner's Activities of Daily Living (ADL's) and Instrumental Activities of Daily Living (IADL's), which resulted in a reduction in HHS. (Exhibit A, p 19; Testimony).

Specifically, the ASW summarized her assessment as follows:

Reviewed the functional assessment with [REDACTED] and [REDACTED]. Bathing-[REDACTED] stated that she needs assistance with bathing three days a week. She stated that she needs help getting in/out of the shower, washing her hair twice a week, washing her back and drying off. ... The ranking will be the same and the days will be decreased from seven days a week to three days a week and the time will be reduced to the state recommended time. Dressing-[REDACTED] stated that she needs assistance getting dressed and undressed and with tying her shoes. The days per week will remain the same and the ranking and time will be reduced to the state recommended time. Eating-[REDACTED] stated that she is able to feed herself. The rank, days and time will be removed. Grooming-[REDACTED] stated that she is able to comb her hair, take care of her dentures (three times a week). She needs assistance with her toenails 2x a month and shave her legs once a week. The rank will remain the same, the days per week will decrease from seven to one and the time will remain the same. Mobility-[REDACTED] stated she utilizes her walker and is able to ambulate independently inside of the home. When she needs to go downstairs and out of the home she needs assistance. The ranking and days will remain the same and the time will be reduced to the state recommended time. Toileting-[REDACTED] stated that she needs help up off the toilet and with getting her clothing up and down. The rank and days will be the same and the time will be reduced to the state recommended time. Transferring-[REDACTED] stated that it takes her an extremely long time to transfer from laying to sitting and from sitting to standing however, she is able to do this independently. The rank, days and time will be removed. IADL's: Housework no change. Laundry is done once a week and the days per week are going to be reduced to once a week. The time will be increased. Travel for Laundry-The laundromat is close to the client's home and will be reduced in days and time. Medication-no change. Meal Prep-no change. Shopping-[REDACTED] needs assistance with grocery shopping. She stated that they go shopping at Walmart and Meijer on West Main. The days will decrease, this will also decrease the travel time. (*Id.*)

3. On June 6, 2024, following the assessment, the ASW sent Petitioner a negative action notice indicating that Petitioner's HHS would be reduced from approximately 178 hours and 28 minutes per month to 96 hours and 57 minutes per month based on the above assessment. (Exhibit A, pp 17-18, 22-23; Testimony)
4. On July 10, 2024, Petitioner's Request for Hearing was received by the Michigan Office of Administrative Hearings and Rules. (Exhibit A, pp 8-10; 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.

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.

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.

*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, 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.

*Adult Services Manual 115
May 1, 2023, p 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.
- 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.

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.

*Adult Services Manual 120
May 1, 2023, pp 1-8
Emphasis added*

ASM 155 Reviews

CASE REVIEWS

Home Help cases must be reviewed every six months.

Requirements for case review must include:

- A face-to-face contact is required with the client in the home.
 - Review of client satisfaction with the delivery of planned services and care provided by the caregiver or agency.
 - Follow-up on any absences or hospitalization coming up or since the last home visit.
- A face-to-face or phone contact must be made with the caregiver or agency provider at each review to verify services are being furnished.

Note: If contact is made by phone, the caregiver or agency provider must offer identifying information such as date of birth and the last four digits of their social security number. A face-to-face interview in the client's home or local Michigan Department of Health and Human Services (MDHHS) office must take place at the next review.

- A review of the current comprehensive assessment and plan of care.
- Verification of the client's Medicaid eligibility, when Home Help services are being paid.
- Follow-up collateral contacts with significant others such as family, guardians, and friends to assess their role in the plan of care, if applicable.

Adult Services Manual 155
February 1, 2019
Emphasis added

The ASW testified that on May 31, 2024, she conducted a 6-month assessment with Petitioner and her provider in Petitioner's home. The ASW indicated that she reviewed Petitioner's ADL's and IADL's, which resulted in a reduction in HHS. (Exhibit A, p 19; Testimony). The ASW testified that on June 6, 2024, she sent Petitioner a negative action notice indicating that Petitioner's HHS would be reduced from approximately 178 hours and 28 minutes per month to 96 hours and 57 minutes per month based on the above assessment.

Petitioner's daughter and provider testified that she did not realize she could interject when Petitioner answered questions incorrectly during the assessment. Petitioner's daughter and provider indicated that she must help Petitioner bathe every day because Petitioner urinates on herself and needs help getting in and out of the shower.

Petitioner's daughter and provider testified that she needs two days per week to travel for, and do laundry because Petitioner soils her clothes every day and she cannot let those clothes sit for a whole week. Petitioner's daughter and provider indicated that she needs two days per week to travel for laundry and shopping. Petitioner's daughter and provider testified that she needs two days per week to shop for groceries because Petitioner is a diabetic and is on a special diet. Petitioner's daughter and provider indicated that she needs help with toileting and grooming seven days per week as well as help with transferring every day.

Petitioner's daughter and provider also indicated that eating should not have been removed as a task because while Petitioner can feed herself, she is easily distracted and needs numerous reminders to finish her meals.

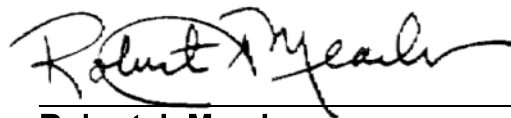
Based on the evidence presented, Petitioner has failed to prove by a preponderance of the evidence that the Department erred in authorizing her HHS. The ASW testified in a credible manner about answers given by Petitioner during the assessment and the ASW properly adjusted Petitioner's HHS based on those answers and based on policy. Regarding HHS for eating, as indicated above, reminding and cueing is not covered through the HHS program. Unfortunately, it seems as if Petitioner's daughter and provider did not actively participate in the assessment, so some of the answers given may have been incorrect. However, the ASW can only base her decision on the information provided to her, and based on that information, a reduction was proper. As such, the Department's ASW properly calculated Petitioner's HHS based on policy. In the future, Petitioner's daughter and provider should feel free to be an active participant in the assessment.

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 properly authorized Petitioner's HHS.

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 day 22nd day of August 2024.

S. James

S. James

**Michigan Office of Administrative
Hearings and Rules**

Via Electronic Mail:

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