



STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

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

MARLON BROWN
DIRECTOR

Date Mailed: October 2, 2024
MOAHR Docket No.: 24-008737
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Steven Kibit

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.*, and upon the Petitioner's request for a hearing.

After due notice, a telephone hearing was held on September 12, 2024. [REDACTED] Petitioner's caregiver, appeared and testified on Petitioner's behalf. Petitioner and [REDACTED] a friend, also testified as witnesses for Petitioner. Emily Piggott, Appeals Review Officer, represented the Respondent Department of Health and Human Services (DHHS or Department). Rhonda Henderson, Adult Services Worker (ASW), and Judy Gilbert, Adult Services Supervisor, testified as witnesses for the Department.

During the hearing, the Department submitted an evidence packet that was admitted into the record without objection as Exhibit A, pages 1-60. Petitioner did not submit any proposed exhibits.

ISSUE

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

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 [REDACTED] year-old Medicaid beneficiary who has been diagnosed with major depressive disorder, lumbago-low back pain, and fusion of spine. (Exhibit A, pages 6, 10).
2. Since May of 2018, Petitioner has been approved for HHS through the Department. (Exhibit A, page 6).

3. Prior to the action at issue in this case Petitioner was approved for 170 hours and 59 minutes per month of HHS. (Exhibit A, pages 20-21).
4. Specifically, Petitioner was approved for 30 minutes per day, 7 days a week (15:03 per month) for assistance with bathing; 20 minutes per day, 7 days a week (15:03 per month) for assistance with dressing; 50 minutes per day, 7 days a week (25:05 per month) for assistance with eating; 20 minutes per day, 7 days a week (10:02 per month) for assistance with grooming; 30 minutes per day, 7 days per week (15:03 per month) for assistance with mobility; 36 minutes per day, 7 days per week (18:04 per month) for assistance with toileting; 28 minutes per day, 7 days per week (14:03 per month) for assistance with transferring; 42 minutes per day, 2 days per week (6:01 per month) for assistance with housework; 49 minutes per day, 2 days per week (7:01 per month) for assistance with laundry; 30 minutes per day, 2 days per week (4:18 per month) for travel for laundry; 12 minutes per day, 7 days per week (6:01 per month) for assistance with medications; 50 minutes per day, 7 days per week (25:05 per month) for assistance with meal preparation; 35 minutes per day, 2 days per week (5:01 per month) for assistance with shopping; and 36 minutes per day, 2 days per week (5:10 per month) for travel for shopping. (Exhibit A, page 21).
5. On May 23, 2024, the ASW completed a comprehensive assessment with Petitioner and Petitioner's representative. (Exhibit A, page 11).
6. During the assessment, Petitioner reported being independent in eating, mobility, transferring, and medications. (Exhibit A, page 11; Testimony of ASW).
7. He also reported that he has a washer and dryer in his home, and that he and his provider had no need to travel for laundry. (Exhibit A, page 11; Testimony of ASW).
8. He further reported having a roommate. (Exhibit A, page 11; Testimony of ASW).
9. He also reported the assistance he needs with bathing, dressing, grooming, toileting, housework, laundry, meal preparation, and shopping. (Exhibit A, pages 11-13; Testimony of ASW).
10. Petitioner further identified the store he and his provider shopped at, and the ASW calculated how long it takes to get there. (Exhibit A, page 13; Testimony of ASW).
11. On May 31, 2024, the Department sent Petitioner written notice that, effective June 14, 2024, her HHS would be reduced to 31 hours and 58 minutes per month. (Exhibit A, page 14).

12. The reduced amounts included 10 minutes per day, 3 days a week (2:09 per month) for assistance with bathing; 5 minutes per day, 3 days a week (1:09 per month) for assistance with dressing; 20 minutes per day, 1 day a month (0:20 per month) for assistance with grooming; 15 minutes per day, 4 days per week (4:18 per month) for assistance with toileting; 21 minutes per day, 2 days per week (3:01 per month) for assistance with housework; 14 minutes per day, 1 day per week (1:00 per month) for assistance with laundry; 50 minutes per day, 4 days per week (14:20 per month) for assistance with meal preparation; 2 hours and 30 minutes per day, 2 days per month (5:00 per month) for assistance with shopping; and 23 minutes per day, 2 days per month (0:46 per month) for travel for shopping. (Exhibit A, page 19).
13. Assistance with eating, mobility, transferring, travel for laundry, and medications was removed completely. (Exhibit A, pages 19, 21).
14. On August 1, 2024, the Michigan Office of Administrative Hearings and Rules (MOAHR) received the request for hearing filed in this matter with respect to the reduction in HHS. (Exhibit A, pages 4-5).

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.

Complex Care Needs

Complex care refers to conditions requiring intervention with special techniques and/or knowledge. These complex care tasks are performed on client's 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 and feeding.
- Catheters or legs bags.
- Colostomy care.
- Bowel program.
- Suctioning.
- Specialized skin care.
- Range of motion exercises.
- Peritoneal dialysis.
- Wound care.
- Respiratory treatment.
- Ventilators.
- Injections.

When assessing a client with complex care needs, refer to the MDHHS-5535, Complex Care Assessment, from MiAIMS forms for assistance with activity ranking, frequency, and length of time needed...

ASM 120, pages 2-5

Here, as discussed above, the Department reduced Petitioner's HHS pursuant to the above policies.

In appealing that decision, Petitioner bears the burden of proving by a preponderance of the evidence that the Department erred in reducing his HHS. 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 record and applicable policies in this case, Petitioner has failed to meet that burden of proof and the Department's decision must therefore be affirmed.

Petitioner was approved for a substantial amount of HHS before, almost to the level of EHHS, and the ASW credibly testified regarding why a reduction was appropriate based on the reports made during the assessment.

Moreover, while Petitioner disputes the overall reduction, his testimony was very broad, and he did not dispute any of the specific findings made by the ASW.

Additionally, while Petitioner's representative disputed reduced amounts or days per week authorized for assistance with the specific tasks of laundry, toileting and meal preparation, that testimony was not persuasive. For example, Petitioner's representative testified that it takes longer to do Petitioner's laundry than what was authorized, but his testimony ignores that the Department only pays for the hands-on assistance with laundry and not the entire process, with Petitioner's representative able to do other things while clothes are in the washer and dryer. Moreover, for meal preparation and toileting, the disagreement is based on updated information or changes that have occurred since the reduction was made while 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.

To the extent that Petitioner's circumstances have changed, or he has additional information to provide, he can always request that his HHS be increased in the future along with that new or updated 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.

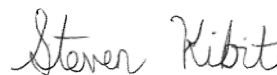
DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, decides that the Department properly reduced Petitioner's HHS.

IT IS, THEREFORE, ORDERED that:

The Department's decision 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 2nd day of October 2024.

S. James

S. James
**Michigan Office of Administrative
Hearings and Rules**

Via Electronic Mail:

Agency Representative
Emily Piggott
DCH Appeals Section
222 N Washington Square
Lansing, MI 48909
PiggottE2@michigan.gov

DHHS
Renee Olian
Kalamazoo County DHHS
427 E Alcott St
Kalamazoo, MI 49001
MDHHS-Kalamazoo-Hearings@michigan.gov

DHHS Department Contact
Michelle Martin
MDHHS
Lansing, MI 48933
MDHHS-Home-Help-Policy@michigan.gov

DHHS Department Representative
Mary Carrier
MDHHS Appeals Section
Lansing, MI 48909
MDHHS-Appeals@michigan.gov

Via First Class Mail:

Petitioner

[REDACTED]
[REDACTED] MI [REDACTED]

Authorized Hearing Representative

[REDACTED]
[REDACTED] MI [REDACTED]