GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

MARLON I. BROWN, DPA
DIRECTOR

[redacted]
[redacted] MI [redacted]

Date Mailed: September 30, 2024
MOAHR Docket No.: 24-008875
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 September 24, 2024. [redacted] Petitioner, appeared on her own behalf. Lana Karadsheh, 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 April 10, 2017, Petitioner was approved for HHS. (Exhibit A.)

2. Prior to June 18, 2024, Petitioner was approved for 179 hours and 5 minutes a month of HHS benefits. The allocation covered the tasks of

bathing, dressing, eating, grooming, mobility, toileting, transferring, housework, laundry, medication, meal preparation, shopping for foods/medication, and travel for shopping. (Exhibit A; Testimony.)

3. On June 3, 2024, the Petitioner participated in a face-to-face assessment. During the conversation, Petitioner indicated she needed assistance with bathing 2 times per week, could dress herself but needed assistance with putting on socks and shoes, could feed herself, could groom herself, did not need assistance with ambulating or transferring, needed help with housekeeping, needed help with laundry that was performed one time a week on Sundays, that her husband helps with medications, prepared meals daily with the assistance of her husband, and needed help with shopping that was done one time a week with stops at both Aldi's and Sams Club. (Exhibit A; Testimony.)

4. On June 18, 2024, the Petitioner spoke to the Department on the telephone regarding a recent change and further reported her husband's recent diagnosis with cancer and his inability to now assist with daily activities. The Petitioner went on to indicate she would need assistance with showering 4 days a week, meal preparation 7 days a week as her husband could no longer assist, and assistance with medications. (Exhibit A; Testimony.)

5. On June 18, 2024, the Department reduced Petitioners HHS benefits to 52 hours and 10 minutes a month. The Department specifically reduced the following tasks:

Task	Prior Allocation	Proposed Allocation
Bathing	7 days a week 40 minutes a day	4 days a week 10 minutes a day
Dressing	7 days a week 28 minutes a day	7 days a week 10 minutes a day
Eating	7 days a week 17 minutes a day	Eliminated
Grooming	7 days a week 19 minutes a day	Eliminated
Mobility	7 days a week 28 minutes a day	Eliminated
Toileting	7 days a week 29 minutes a day	Eliminated

Transferring	7 days a week 19 minutes a day	Eliminated
Housework	2 days a week 42 minutes a day	2 days a week 21 minutes a day
Laundry	1 day a week 1 hour and 38 minutes	1 day a week 1 hour and 38 minutes a day
Medication	7 days a week 19 minutes a day	1 day a week 4 minutes a day
Meal Preparation	7 days a week 60 minutes a day	7 days a week 50 minutes a day
Shopping for food/medication	2 days a week 35 minutes a day	1 day a week 1 hour and 10 minutes a day
Travel for shopping	2 days a week 49 minutes a day	1 day a week 35 minutes a day
Range of Motion Exercises	7 days a week 1 hour a day	eliminated

6. On June 18, 2024, the Department sent Petitioner an Advance Negative Action Notice. The notice indicated Petitioner's HHS would be reduced to 52 hours and 10 minutes a month effective July 2, 2024.

7. On August 12, 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.

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.[1]

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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:

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

- 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.[2]

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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.[3]

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

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:

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.[4]

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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 straight forward and well detailed regarding the conversations that took place during the assessment and what was reported later during a telephone conversation following the assessment. 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, the Petitioner insisted on needing at least 60 hours a month to perform each of the tasks she needed assistance with. Petitioner went on to focus on bathing 7 days a week and needing more time for shopping and transportation to the stores she frequented. Petitioner also indicated a need for additional assistance with dressing. Petitioner, however, did not identify specifically why the additional time was needed outside of bathing. And Petitioner did not dispute the milage calculations used by the Department in determining travel for shopping.

The most problematic issue with this case is the fact bathing used to be at 7 days a week and then was reduced. It is not unordinary for someone to bathe 7 days a week, and, thus, unusual it would be reduced in this case, even more so when Petitioner is testifying to bathing 7 days a week.

Consequently, based on a review of the record, I find sufficient evidence to affirm the Department's HHS allocation in this case in part and reverse in part.

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 as it pertains to each of the tasks with the exception of bathing.

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

IT IS, THEREFORE, ORDERED that:

The Department's decision is **AFFIRMED in part and REVERSED in part.**

The Department is ordered to reassess the Petitioner for the task of bathing.

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:

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