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GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: March 9, 2020
MOAHR Docket No.: 19-012739
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Colleen Lack

DECISION AND ORDER

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 *et seq*; 42 CFR 438.400 *et seq*; and Mich Admin Code, R 792.11002.

After due notice, a hearing was held on January 29, 2020. [REDACTED] Niece and Authorized Hearing Representative (AHR) appeared on Petitioner's behalf. [REDACTED] the Petitioner, was present. Allison Pool, Appeals Review Officer, represented the Department of Health and Human Services (Department). Antonio Davie, Adult Services Worker (ASW), appeared as a witness for the Department.

During the hearing proceeding, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-51.

ISSUE

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

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 October 14, 2019, the Department received a referral for HHS for Petitioner. (Exhibit A, p. 24)
2. Petitioner's doctor completed a DHS-54A Medical Needs form on November 12, 2019. The listed diagnoses are schizophrenia, bipolar, type II diabetes, and hypertension. In field I, the doctor certified that Petitioner had a medical need for assistance with listed personal care activities. The activities of

taking medications, shopping, laundry, and housework were circled. (Exhibit A, p. 26)

3. On November 26, 2019, the ASW went to Petitioner's home and completed an initial assessment with Petitioner and his niece. In part, the ASW went over the Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADLs) included in the HHS program. It was reported that Petitioner needs assistance with housework, laundry with travel, medication, and shopping with travel. (Exhibit A, p. 25; ASW Testimony)
4. On November 27, 2019, the Department sent Petitioner an Advance Negative Action Notice informing him that HHS was denied based on the assessment not identifying a need for assistance with an ADL, as was also indicated on the DHS-54A Medical Needs form. (Exhibit A, p. 7)
5. On December 11, 2019, Petitioner's Request for Hearing was received by the Michigan Office of Administrative Hearings and Rules (MOAHR). (Exhibit A, pp. 6-23)

CONCLUSIONS OF LAW

The Medical Assistance Program (MA) 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 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 health professional and may be provided by individuals or by private or public agencies.

Adult Services Manual (ASM) 101, addresses HHS payments:

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.

Complex Care

Complex care refers to conditions requiring intervention with special techniques and/or knowledge. These complex care

tasks are performed on clients 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 or feeding assistance.
- Catheters or leg bags.
- Colostomy care.
- Bowel program.
- Suctioning.
- Specialized skin care.
- Range of motion exercises.
- Dialysis (In-home).
- Wound care.
- Respiratory treatment.
- Ventilators.
- Injections.

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 (ASM) 101,
April 1, 2018, pp. 1-5

Adult Services Manual (ASM) 120, addresses the adult services comprehensive assessment:

Requirements

Requirements for the comprehensive assessment include, but are not limited to:

- A comprehensive assessment will be completed on all new cases.
- A face-to-face contact is required with the client in his/her place of residence.

Note: If there are worker safety issues related to meeting the client in the home, a policy exception may be requested from the Home Help Policy program office to conduct the visit at another setting.

- The assessment may also include an interview with the individual who will be providing Home Help services.
- A new face-to-face assessment is required if there is a request for an increase in services before payment is authorized.
- A face-to-face assessment is required on all transfer-in cases before a payment is authorized.
- The assessment must be updated as often as necessary, but **minimally** at the six-month review.

- A release of information must be obtained when requesting documentation from confidential sources and/or sharing information from the department record.
 - Use the DHS-27, Authorization to Release Information, when requesting client information from another agency.
 - Use the DHS-1555, Authorization to Release Protected Health Information, if requesting additional medical documentation. This form is primarily used for APS cases.
- Follow rules of confidentiality when Home Help cases have companion Adult Protective Services cases; see SRM 131, Confidentiality.

Functional Abilities Tab

The **Functional** Tab under **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 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 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 tab under 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 worker (ASW) must rank Mr. Jones a 3 or greater under the functional abilities tab. Mr. Jones would be eligible to receive Home Help services.

Assistive technology includes such items as walkers, wheelchairs, canes, reaches, 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 Complex Care Assessment MDHHS 5535 from MiAIMS forms for assistance with activity ranking, frequency, and length of time needed.

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.

MiAIMS includes a client centered time and task based on the assessment of client's needs. MiAIMS also has a provider time and task based on client choice of activities to be performed by their chosen provider. Client time and task may be different from provider time and task due to client choice. Client time and task offers the maximum approved time based on the client's assessed need. Provider time and task can have the same hours or less depending on client request, multiple providers, or flexibility of schedules.

Note: This allows flexibility for client choice while also assuring the basic needs are being met. Caregiver must correctly document what tasks they are performing and will only be paid for tasks that are approved on the authorized time and task.

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 time and task will have bathing allocated, but bathing will not be in her provider's time and task.

An assessment of need, at a ranking of 3 or greater, does not automatically guarantee the maximum allotted time

allowed by the reasonable time schedule (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 time required to cut the food and not the full amount of time suggested under the RTS for eating.

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, average time and frequency may vary due to changes in 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.

Responsible Relatives

A responsible relative is defined as an individual's spouse or a parent of an unmarried child under age 18.

Activities of daily living (ADL) may be approved when the responsible relative is **unavailable** or **unable** to provide these services.

Note: Unavailable means absence from the home for an extended period due to employment, school or other legitimate reasons. The responsible relative must provide a work or school schedule to verify they are unavailable to provide care. **Unable** means the responsible person has disabilities of their own which prevent them from providing care. These disabilities must be documented and verified by a medical professional on the DHS-54A, Medical Needs form.

Do **not** approve shopping, laundry, or light housecleaning, when a responsible relative of the client resides in the home, **unless** they are unavailable or unable to provide these

services. Document findings in the contact module on MiAIMS.

Example: Mrs. Smith needs Home Help services. Her spouse is employed and is out of the home Monday thru Friday from 7a.m. to 7p.m. The ASW would not approve hours for shopping, laundry or house cleaning as Mr. Smith is responsible for these tasks.

Adult Services Manual (ASM) 120,
February 1, 2019, pp. 1-7

Petitioner's doctor completed a DHS-54A Medical Needs form on November 12, 2019. The listed diagnoses are schizophrenia, bipolar, type II diabetes, and hypertension. In field I, the doctor certified that Petitioner had a medical need for assistance with listed personal care activities. The activities of taking medications, shopping, laundry, and housework were circled. (Exhibit A, p. 26) The circled activities are all IADL activities.

On November 26, 2019, the ASW went to Petitioner's home and completed an initial assessment with Petitioner and his niece. In part, the ASW went over the ADLs and IADLs included in the HHS program. It was reported that Petitioner needs assistance with housework, laundry with travel, medication, and shopping with travel. These reported needs are all IADL activities. It was also reported that Petitioner does not have any adaptive equipment. Regarding bathing, Petitioner's niece stated that sometimes she has to remind Petitioner to not run the bath water too hot. (Exhibit A, p. 25; ASW Testimony) The ASW did not rank Petitioner at functional level 3 or greater with any ADL activities and no needs for assistance with any complex care services were assessed. (ASW Testimony) Accordingly, on November 27, 2019, the Department sent Petitioner an Advance Negative Action Notice informing him that HHS was denied based on the assessment not identifying a need for assistance with an ADL, as was also indicated on the DHS-54A Medical Needs form. (Exhibit A, p. 7)

Petitioner's niece testified that she has to assist Petitioner with IADLs, such as taking his medications, cleaning, cooking, and grocery shopping. Regarding bathing, Petitioner's niece testified that she has to run the bath water for Petitioner, otherwise he would make it too hot. Petitioner's niece also monitors Petitioner in the bathtub and shaves him. It was asserted that Petitioner needs assistance with all of the ADLs listed in the ASM policy. Petitioner cannot do them by himself. Petitioner's niece has to be there with him, make sure he is doing it right, and correct him. This is everyday, seven days per week. (Niece Testimony) However, Petitioner not being able to do ADLs by himself, without his niece there to make sure he is doing them right and correct him, would be considered functional ranking level 2 (supervising, reminding, prompting, guiding, etc.).

Overall, the information available to the ASW for this assessment did not establish that Petitioner had a need for assistance at functional ranking level 3 or greater with at least

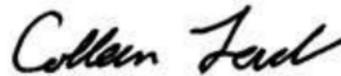
one ADL or a complex care activity. During the home visit, needs for hands on assistance were only reported regarding IADL activities. The ASW understood that Petitioner's niece only reminds Petitioner not to run the bath water too hot. The ASW's notes and testimony from the home visit are found credible. Needs for assistance at the level of reminding, supervising, guiding, and prompting are considered functional ranking level 2, and are not covered by the HHS program. Further, on the DHS-54A Medical Needs form, Petitioner's physician indicated Petitioner only had needs for assistance with IADL activities. Accordingly, under the above cited ASM policies, the Department's November 27, 2019, determination to deny Petitioner's HHS referral is upheld based on the information available to the Department at that time.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly denied Petitioner's October 14, 2019, Home Help Services (HHS) referral based on the information available at the time of the determination.

IT IS, THEREFORE, ORDERED that:

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



CL/dh

Colleen Lack
Administrative Law Judge
for Robert Gordon, Director
Department of Health and Human Services

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

DHHS -Dept Contact

Michelle Martin
Capitol Commons
6th Floor
Lansing, MI 48909

DHHS Department Rep.

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