

GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

Date Mailed: March 13, 2020
MOAHR Docket No.: 19-013180
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 February 6, 2020. [REDACTED], the Petitioner, appeared on her own behalf. [REDACTED], Friend, appeared as a witness for Petitioner. Allison Pool, Appeals Review Officer, represented the Department of Health and Human Services (Department). Angelica Hollins, Adult Services Worker (ASW), and Jocelyn Murphy, Adult Services Supervisor, appeared as witnesses for the Department.

During the hearing proceeding, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-46.

ISSUE

Did the Department properly suspend then terminate Petitioner's Home Help Services (HHS) case?

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 has had an open HHS case since October 22, 2014. (Exhibit A, p. 8)
2. On September 19, 2019, the Department sent a home visit letter to Petitioner notifying her of a home visit scheduled for October 2, 2019. (Exhibit A, p. 11)
3. On October 3, 2019, an Advance Negative Action Notice was issued to Petitioner

stating the HHS authorization would be suspended effective October 17, 2019, because a home visit was attempted on September 25, 2019, and there was no answer. (Exhibit A, p. 12)

4. On October 17, 2019, Petitioner contacted the ASW and the home visit was rescheduled for October 30, 2019. (Exhibit A, pp. 13-14)
5. On October 30, 2019, the ASW had a telephone contact with Petitioner's HHS caregiver verifying that he continued to provide services for Petitioner. (Exhibit A, p. 14)
6. On October 30, 2019, the ASW completed a home visit for a review of the HHS case. (Exhibit A, p. 15)
7. On October 31, 2019, an Advance Negative Action Notice was issued to Petitioner stating the HHS authorization would be suspended effective November 14, 2019, because the most recent assessment did not identify a need for hands on assistance with at least one Activity of Daily Living (ADL). (Exhibit A, p. 16)
8. The October 31, 2019, Advance Negative Action Notice, was meant to be a termination notice, rather than a suspension notice. (ASW Testimony)
9. Petitioner's HHS case closed November 15, 2019. (Exhibit A, p. 8)
10. Petitioner's Request for Hearing was received by the Michigan Office of Administrative Hearings and Rules (MOAHR) on December 27, 2019. (Exhibit A, pp. 6-7)

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.

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 bathe 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.

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 of 5

Adult Services Manual (ASM) 115, addresses the adult services requirements, including the DHS-54A Medical Needs form:

MEDICAL NEEDS FORM (DHS-54A)

The DHS-54A, Medical Needs, form must be signed and dated by a medical professional certifying a medical need for personal care services. The medical professional must be an enrolled Medicaid provider and hold one of the following professional licenses:

- Physician (M.D. or D.O.).
- Physician assistant.
- Nurse practitioner.
- Occupational therapist.
- Physical therapist.

The medical needs form is only required for home help clients at the initial opening of a case, unless one of the following exists:

- The ASW assesses a decline in the client's health which significantly increases their need for services.
- The ASW assesses an improvement in the client's ability for self-care, resulting in a decrease or elimination of services and the client states their care needs have not changed.
- The current medical needs form has a specified time frame for needed services and that time frame has elapsed.

At each case review the ASW must document in the general narrative if a medical needs form is or is not needed.

The client is responsible for obtaining the medical certification of need but the form must be completed by the medical professional and **not** the client. The National Provider Identifier (NPI) number must be entered on the form

by the medical provider and the medical professional must indicate whether they are a Medicaid enrolled provider.

The medical professional certifies that the client's need for service is related to an existing medical condition. **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.

Adult Services Manual (ASM) 115,
January 1, 2018, pp. 1-2 of 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 adjoined 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 of 8

On September 19, 2019, the Department sent a home visit letter to Petitioner notifying her of a home visit scheduled for October 2, 2019. (Exhibit A, p. 11) On October 3, 2019, an Advance Negative Action Notice was issued to Petitioner stating the HHS authorization would be suspended effective October 17, 2019, because a home visit was attempted on September 25, 2019, and there was no answer. (Exhibit A, p. 12) Accordingly, it appears that this proposed suspension was not appropriate because an error was made regarding the date of the home visit. Either a typographical error was made regarding the date of the attempted visit on the suspension notice, or a home visit was attempted on September 25, 2019, without Petitioner having been sent notice of an appointment for that date.

However, on October 17, 2019, Petitioner contacted the ASW and the home visit was rescheduled for October 30, 2019. (Exhibit A, pp. 13-14) On October 30, 2019, the ASW had a telephone contact with Petitioner's HHS caregiver verifying that he continued to provide services for Petitioner. (Exhibit A, p. 14) On October 30, 2019, the ASW completed a home visit for a review of the HHS case. The ASW observed Petitioner standing without the use of any adaptive equipment. Petitioner confirmed that she did not use any adaptive equipment. The ASW asked about Petitioner's medications and diagnosis. The ASW asked Petitioner about her daily needs. The ASW stated Petitioner said she occasionally needs help with housework, laundry, meal preparation, and shopping. However, the ASW also testified that Petitioner did not indicate there had been any changes with her care needs. (Exhibit A, p. 15; ASW Testimony)

The ASW asserted that the printout of functional rankings in the Department's evidence packet were the activities that Petitioner had been receiving assistance with prior to the assessment at issue. The only activities are IADLs, specifically: housework, laundry, meal preparation, shopping, and travel for shopping. (Exhibit A, p. 10; ASW Testimony) This does not appear to be an accurate record of the prior functional rankings because there was no ADL activity ranked at functional level 3 or greater or any complex care activity, which would have been required for Petitioner to have an open HHS case. The ASW was not sure what ADL or complex care task had allowed for Petitioner to be eligible to receive HHS. (ASW Testimony)

The ASW determined that Petitioner's HHS case would close because Petitioner did not have a need for assistance at functional ranking level 3 or greater with an ADL or a need for assistance with a complex care activity. The ASW did not request an updated DHS-54A Medical Needs form for this assessment. The ASW testified that she had not been aware of the policy that indicates another medical needs form would be needed when the ASW assesses an improvement in the client's ability for self-care, resulting in a decrease or elimination of services and the client states their care needs have not changed. (ASW Testimony)

On October 31, 2019, an Advance Negative Action Notice was issued to Petitioner stating the HHS authorization would be suspended effective November 14, 2019, because the most recent assessment did not identify a need for hands on assistance with at least one Activity of Daily Living (ADL). (Exhibit A, p. 16) The October 31, 2019, Advance Negative Action Notice, was meant to be a termination notice, rather than a suspension notice. (ASW Testimony) The termination action was implemented. Petitioner's HHS case closed November 15, 2019. (Exhibit A, p. 8)

Petitioner testified that all the ASW did during the home visit was look at her medicine. Petitioner explained that she has cancer, has had one breast removed and is still going through it with the other breast. Petitioner indicated there are a lot of things she cannot do, which is why she has a caregiver. Petitioner's friend lives upstairs, hears everything, and is often there when the HHS caregiver is with Petitioner. Petitioner's described needs included hands on assistance with ADLs, such as help getting in and out of the tub and help dressing. (Petitioner and Friend Testimony)

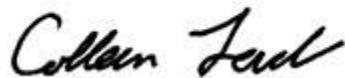
Overall, the available evidence does not support that suspension then termination of Petitioner's HHS case was in accordance with Department policy. The evidence indicates multiple errors were made, including not actually sending Petitioner written notice that the HHS case would be terminated. Further, if the ASW assessed an improvement in Petitioner's ability for self-care resulting in a termination of services, and Petitioner had stated her care needs have not changed, the ASW should have requested an updated DHS-54A Medical Needs form. A re-assessment of the HHS case is needed.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department improperly suspended then terminated Petitioner's HHS case based on the available information.

IT IS, THEREFORE, ORDERED that:

The Department's decision is **REVERSED**. If they have not already done so, the Department shall initiate completing a re-assessment for Petitioner's HHS case, with Petitioner's HHS authorization being reinstated to the previously authorized amount while the reassessment is pending.



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

CL/dh

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
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DHHS-Location Contact

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Petitioner

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