

GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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[REDACTED] MI [REDACTED]

Date Mailed: July 16, 2020
MOAHR Docket No.: 20-000005
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 May 6, 2020. Petitioner appeared on her own behalf. No one appeared on behalf of the Michigan Department of Health and Human Services, Respondent (Department).¹ The hearing proceeded in the absence of the Department. At the conclusion of the hearing, it was determined that the Department did not receive a copy of the notice scheduling the May 6, 2020 hearing. As a result, an adjournment order was sent out rescheduling the May 6, 2020 hearing for July 14, 2020. The July 14, 2020 hearing proceeded as scheduled. At the commencement of the July 14, 2020 hearing, it was indicated that the testimony taken during the May 6, 2020 hearing was being set aside and struck from the record.

Exhibits:

Petitioner	None
Department	A – Hearing Summary

ISSUE

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

FINDINGS OF FACT

¹ On April 8, 2020, an Order was issued to both parties. The notice indicated the hearing was being adjourned until May 6, 2020 at 10:00 a.m. The notice went on to indicate the parties shall call the conference line at 1-877-820-7831, Guest Pass 141563, at the time of the hearing to participate. The Department never called in. An attempt was made to reach the Department's Representative at an office number of 1-517-335-3071. The attempt was unsuccessful.

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, born February 15, 1955. (Exhibit A, p 7; Testimony).
2. On March 22, 2018, a face-to-face assessment took place in the absence of Petitioner's provider. (Exhibit A, p 13; Testimony.)
3. On September 6, 2018, a face-to-face assessment took place in the absence of Petitioner's provider. (Exhibit A, p 14; Testimony.)
4. On March 19, 2020, a face-to-face assessment took place in the absence of Petitioner's provider. (Exhibit A, p 15; Testimony.)
5. On September 17, 2019, a face-to-face assessment took place in the absence of Petitioner's provider. During the assessment, Petitioner was observed ambulating without assistance, appeared groomed and the home was neat. (Exhibit A, p 15; Testimony.)
6. At no point in time between March 22, 2018 and September 17, 2019, was Petitioner's provider present for a face-to-face assessment. (Exhibit A, pp 15-16; Testimony.)
7. As of December 4, 2019, Petitioner was approved for HHS for the tasks of bathing, dressing, grooming, housework, laundry, medication, meal preparation, shopping for foods/meds and travel for shopping. (Exhibit A, p 10; Testimony.)
8. On December 4, 2019, Department sent Petitioner a negative action notice. The notice indicated Petitioner appeared to no longer need Home Help services as the Petitioner was walking without assistance, was already dressed, and well groomed as well as the Provider having not been interviewed in the home in the last year. (Exhibit A, p 17; Testimony.)
9. On or around January 2, 2020, the Michigan Office of Administrative Hearings and Rules, received from Petitioner, a request for hearing. (Exhibit A, pp 4-5; 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 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.
- 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).
- Appropriate Program Enrollment Type (PET) status.

Medical Need Certification

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.

The DHS-54A or veterans administration medical form are acceptable for individuals treated by a VA physician; see ASM 115, Adult Services Requirements.

Necessity 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) in order to be eligible to receive home help services.

*Adult Services Manual 105
January 1, 2018, pp 1, 3
Emphasis added*

ASM 115 ADULT SERVICES REQUIREMENTS

COMPREHENSIVE ASSESSMENT (MDHHS-5534)

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.

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, at review and redetermination.

An initial face-to-face interview must be completed with the home help caretaker in the client's home or local Michigan Department of Health and Human Services (MDHHS) office. The caretaker is the person providing direct care to the client. A face-to-face or phone contact must be made with all caretakers at the next review to verify services are being furnished.

Note: if contact is made by phone, the caretaker 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 MDHHS office must take place at the next review

*Adult Services Manual 115
January 1, 2018, p 3*

ASM 120 ADULT SERVICES COMPREHENSIVE ASSESSMENT

INTRODUCTION

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 Abilities 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.

*Adult Services Manual 120
January 1, 2018, pp 1-3
Emphasis added*

ASM 120 HOME HELP CAREGIVERS

Caregiver Interview

An initial face-to face interview must be completed with all Home Help caregiver(s). A face-to-face or phone contact must be made with the caregiver(s) at the six month review to verify services are being furnished. If phone contact was made at the last review, a face-to-face contact with the caregiver is mandatory for the next review. The ASW must document the contact in MiAIMS by selecting face to face-client and provider or face to face-provider under the contact tab.

*Adult Services Manual 155
February 1, 2019, p 1.*

* * * *

The ASW testified that the HHS case was being closed as a result of not observing the provider in the home with the client over the prior 3 years and the belief that Petitioner was performing all of her ADL's without the need of hands on assistance or the use of an assistive device.

While the policy does not specifically require the provider be present for the assessment, it still requires the ASW to conclude there is a need for services based on the comprehensive assessment. In this specific case, the absence of the provider being present and the fact Petitioner always appeared neatly groomed and ambulating without assistance led the ASW to conclude the Petitioner no longer had a need for hands on assistance or assistive devices in performing her ADL's.

Petitioner indicated she continued to have a need for assistance and that Petitioner's provider had been meeting with the ASW at the Department office.

Based on the evidence presented, Petitioner has failed to prove, by a preponderance of the evidence, that the Department erred in terminating her HHS case. The evidence was not sufficient to establish that Petitioner had a need for hands on assistance, functional ranking 3 or greater, with at least one ADL, based on the information available to the ASW for this assessment. The ASW provided credible, detailed testimony regarding her observations and her conclusions reached. Accordingly, the denial of Petitioner's HHS application was proper and must be upheld.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly denied Petitioner's HHS application based on the available information.

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

CA/sb

J. Arendt
Corey Arendt
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

Kathleen Verdoni
411 East Genesee
PO Box 5070
Saginaw, MI
48607

DHHS Department Rep.

M. Carrier
Appeals Section
PO Box 30807
Lansing, MI
48933

Agency Representative

John Lambert
PO Box 30807
Lansing, MI
48909

Petitioner

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