



GRETCHEN WHITMER
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: June 16, 2020
MOAHR Docket No.: 20-002098
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 June 9, 2020. [REDACTED], Petitioner's Home Help Caregiver, appeared on behalf of the Petitioner. Petitioner appeared as a witness. John Lambert, Appeals Review Officer, appeared on behalf of the Department of Health and Human Services (Department). Mia Hawkins, Adult Services Worker, appeared as a witness for the Department.

Exhibits:

Petitioner	None
Department	A – Hearing Summary

ISSUE

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

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 Medicaid Beneficiary who receives HHS benefits. (Exhibit (Ex) A, p 8; Testimony.)
2. Prior to March 18, 2020, Petitioner was approved for and received HHS benefits at a monthly approved amount of 67 hours and 4 minutes. (Ex A, pp 11, 17; Testimony.)
3. Prior to March 18, 2020, Petitioner was approved for bathing (7 days a week at 16 minutes a day); ; grooming (3 days per week at 10 minutes a

day); Mobility 7 days a week at 14 minutes a day); transferring (7 days a week at 6 minutes a day); housework (2 days per week at 30 minutes a day); laundry (2 days per week at 30 minutes a day); medication (2 days per week at 2 minutes a day); meal preparation (7 days per week at 50 minutes per day); shopping for food/meds (2 days per week at 30 minutes a day); and travel for shopping (2 days per week at 1 hour per day). (Exhibit A, p 11; Testimony.)

4. On March 3, 2020, the Petitioner participated in a 6 month in home assessment. During the assessment, Petitioner was observed ambulating and transferring without hands on assistance or the use of an assistive device. During the assessment, Petitioner reported that her provider comes every day after 4:30 p.m. and that she was able to bathe herself 3 days per week while other days she needs help getting in and out of the tub; is able to wash herself; takes both baths and showers; able to clip own finger nails but not her own toe nails; is not able to comb her own hair but can brush her own teeth; able to prepare small meals and reheat meals; and is left alone every day until 4:30 p.m. when her provider arrives. (Exhibit A, p 16; Testimony.)
5. As a result of the assessment, the ASW removed the tasks of mobility and transferring based on her observations of Petitioner during the assessment and reduced the time assigned to bathing, grooming and meal preparation based on Petitioner's responses to the questions asked during the assessment. (Exhibit A, pp 12; 16; Testimony.)
6. On March 4, 2020, the Department sent Petitioner an advanced negative action notice. The notice indicated Petitioner's HHS were being reduced and stated specifically:

The reason for this action is =Per the last assessment/review on 03/03/20 it have been determined that some your tasks have been reduced: both transferring and mobility have been removed (observation) Bathing: you stated that you are able to "some days" bathe self up to 3 days per week and need some help (in/out) other days Grooming: you are able to clip fingernails and brush teeth, time reduced only, same days. Meal prep: You are able to prepare some meals and reheat. You stated you don't cook, not unable to cook. Other IADLs: housework, shopping, laundry and Meds are the same. (Exhibit A, p 17.)

7. On March 23, 2020, the Michigan Office of Administrative Hearings and Rules, received from Petitioner, a request for hearing. (Exhibit A, pp 4-7.)

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 the 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.

*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 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
February 1, 2019, pp 1-3
Emphasis added*

Adult Services Manual (ASM) 120, 2-1-2019, addresses responsible relatives:

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.

*ASM 120
February 2, 2019, p 7.*

The Adult Services Glossary defines a responsible relative as a person's spouse or a parent of an unmarried child under age 18.

*Adult Services Glossary (ASG Glossary)
5-1-2013, Page 7 of 9.*

In this case, it was indicated Petitioner was requesting a hearing because Petitioner disagreed with the Department's decision to reduce Petitioner's HHS allocation.

The ASW who performed the assessment and made the decision to reduce Petitioner's HHS benefits, testified the reduction decision was based on the information that was provided during the assessment.

After a complete review of the record, I conclude the Department has established by the necessary competent, material and substantial evidence on the record that it was acting in accordance with Department policy when it reduced the Petitioner's HHS benefits. Petitioner has failed to satisfy the burden of proving by a preponderance of the evidence that the Department improperly determined her HHS benefits. While the Petitioner's Representative testified to the level of care provided to Petitioner, the testimony did not specifically rebut the evidence presented by the Department. It is clear the Petitioner is eligible for Home Help Services and the dispute is only as to the level of care

needed/required. In this case, Petitioner failed to present any evidence that there is an additional need above and beyond what is already being approved.


DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly reduced the Petitioner's HHS benefits.

IT IS, THEREFORE, ORDERED that:

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

CA/sb



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-Location Contact

Sherry Reid
Oakman Adult Services
3040 W. Grand Blvd., Suite L450
Detroit, MI
48202

DHHS Department Rep.

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

Agency Representative

John Lambert
PO Box 30807
Lansing, MI
48909

Petitioner

