

GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED] MI [REDACTED]

Date Mailed: July 7, 2020
MOAHR Docket No.: 20-002806
20-002807
20-002808
20-002809
20-002810
20-002811

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 24, 2020. [REDACTED], Petitioner's Adoptive Mother and Legal Guardian, appeared on behalf of the Petitioners. Theresa Root, Appeals Review Officer, appeared on behalf of the Respondent, the Department of Health and Human Services (Department).

Exhibits:

Petitioner	None
Department	A – Hearing Summary [REDACTED]
	B – Hearing Summary [REDACTED]
	C – Hearing summary [REDACTED]
	D – Hearing Summary [REDACTED]
	E – Hearing Summary [REDACTED]
	F – Hearing Summary [REDACTED]

¹ Addendums were added post hearing for [REDACTED] (Exhibit B) and [REDACTED] (Exhibit F). The addendums were missing time and task pages that were omitted from the originals by mistake. The Addendums were received shortly after the hearings and copies were sent to Petitioner.

ISSUE

Did the Department properly reduce Petitioners' Home Help Services (HHS)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Petitioners are Medicaid beneficiaries that require extensive care and support. (Testimony.)
2. Since at least January 1, 2020, Petitioners have been approved for and receiving HHS. (Exhibit (Ex A; Ex B; Ex C; Ex D; Ex E; Ex F; Testimony.)
3. In addition to HHS, Petitioner's are also eligible for and receive Community Living Supports (CLS) services and some of the beneficiaries are eligible for and receive respite services. (Testimony.)
4. On or around March 1, 2020, the Department's central office sent an email to the Department's local office indicating Petitioner's Provider was being reimbursed for HHS in excess of 24 hours a day. (Testimony.)
5. On or around March 1, 2020, the local office looked into Petitioner's Provider and determined Petitioner's Provider was receiving approximately 26 hours of HHS payments in a 24-hour period. (Testimony.)
6. On April 6, 2020, the Department sent Petitioner's advance negative action notices. The notices indicated Petitioner's HHS were being reduced by 3 hours per day effective April 20, 2020 due to the Petitioner's provider providing care to 6 different beneficiaries and receiving payment in excess of 24 hours a day. The notices indicated the HHS amounts were being reduced to equal 18 hours in a day for the provider and that if a second caregiver, could be assigned, additional hours could be paid. (Ex A; Ex B; Ex C; Ex D; Ex E; Ex F; Testimony.)
7. The Department has determined that the beneficiaries continue to be medically eligible to continue receiving the 3 hours of HHS benefits that were being terminated. (Testimony.)
8. On May 5, 2020, the Michigan Office of Administrative Hearings and Rules, received from Petitioner's a request for hearing. (Ex 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.

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.²

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) codes.

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.

² Adult Services Manual (ASM) 101, April 1, 2018, pp 1-2, 5.

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 for Independent Living Services. An individual must be assessed with at least one activity of daily living (ADL) in order to be eligible to receive home help services.³

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.⁴

ASM 120 ADULT SERVICES COMPREHENSIVE ASSESSMENT

INTRODUCTION

³ ASM 105, January 1, 2018, pp 1, 3.

⁴ ASM 115, January 1, 2018, p 3.

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.

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.⁵

ASM 125 COORDINATION WITH OTHER SERVICES

PARTNERSHIPS

The adult services worker (ASW) has a critical role in developing and maintaining partnerships with community resources. To facilitate these partnerships the adult services worker will:

- Advocate for programs to address the needs of clients.
- Emphasize client choice and quality outcomes.
- Encourage access and availability of supportive services.
- Work cooperatively with other agencies to ensure effective coordination of services
- Coordinate available resources with Home Help services in developing a plan of care that addresses the full range of client needs.⁶

ASM 135 HOME HELP CAREGIVERS

PURPOSE

⁵ ASM 120, February 1, 2019, pp 1-8.

⁶ ASM 125, November 1, 2019, p 1.

The Home Help program is administered by the Michigan Department of Health and Human Services (MDHHS) and provides personal care services to individuals who need hands on assistance with activities of a daily living (ADLs) and assistance with instrumental activities of daily living (IADLs). The items in this section may apply to both individual caregivers and agency providers for MDHHS. For additional policy and procedures regarding Home Help agency providers see ASM 136, Agency Providers.

CAREGIVER SELECTION

The client has the right to choose his or her Home Help caregiver(s). The client is the employer and may terminate the caregiver's employment at any time. Home Help services are a benefit to the client and earnings for the caregiver.

Home Help services cannot be paid to:

- A responsible relative (spouse caring for a spouse or a parent caring for a minor child).

- Fiscal Intermediary (FI).

Note: Fiscal intermediary services are defined by Community Mental Health (CMH) as services that assist the client in meeting their goals of community participation and integration, independence or productivity, while controlling the client's individual budget and choosing staff who will provide the services and supports identified in the individual plan of service. The fiscal intermediary facilitates the employment of service caregivers and is not the caregiver of direct hands on care services.

- Guardians with a permissive exclusion cannot be the paid individual caregiver of the client. Therefore, guardians cannot sign their own MSA-119, Personal Choice and Acknowledgment of Provider Selection form.

Note: Adult services workers and affected guardians will receive written notification of the findings and will be granted a 60-day grace period before action is taken toward termination.⁷

⁷ ASM 135, October 1, 2019, pp 1-2.

The Department witnesses indicated the Petitioner's received an across the board 3-hour reduction to their IADL allocations in order to bring the total aggregate of approved services to 16 hours a day. The Department indicated the reduction was necessary as the Petitioner's all shared the same provider and that prior to the reduction being made, the aggregate of approved services exceeded 24 hours a day. The Department went on to indicate the total reduction to 16 hours was to allow the Provider an opportunity to sleep and perform her own personal care services as HHS are only paid for hands-on-care. It was agreed that the Petitioners are medically qualified for the hours that were being taken away and that they would be added back as soon as another provider was selected.

While I agree with the general premise that it is impossible for the Provider to provide more than 24 hours of care a day and that it is highly unlikely that the Provider provided care in the absence of sleep, the Department failed to provide any policy that necessitated such an across the board reduction, nor did they provide any policy as to how they could make such an arbitrary reduction. Additionally, the Department did not provide any reasoning as to the specific tasks selected and the specific reasoning behind each of the specific reductions.

Based on the foregoing, I find sufficient evidence to reverse the Department's decision to reduce Petitioner's HHS benefits.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED THAT:

The Department's decision is REVERSED, and the Department is ordered to initiate the redetermination of each of the Petitioner's HHS allocations.

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

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