



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: August 3, 2021
MOAHR Docket No.: 20-000038
20-004707, 21-001348
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.

On January 6, 2020, the Michigan Office of Administrative Hearings and Rules (MOAHR), received from Petitioner, a request for hearing. On January 16, 2020, a Notice of Hearing was issued scheduling a in-person hearing for February 18, 2020. On February 13, 2020, the MOAHR, received from Petitioner, a request to adjourn the February 18, 2020, proceeding. On February 14, 2020, an Order was issued converting the February 18, 2020, hearing into a telephone pre-hearing conference.

Following the February 18, 2020, conference, an Order was issued, wherein the Department agreed to reinstate Petitioner's HHS benefits pending the outcome of the appeal¹, and scheduled a hearing for March 26, 2020.

On March 19, 2020, MOAHR, received from Petitioner, a request to adjourn the March 26, 2020, proceeding. On March 25, 2020, an Order was issued granting Petitioner's request.²

On July 22, 2020, MOAHR, received from Petitioner, a second request for a hearing. The request was in regard to a June 30, 2020, negative action notice with a proposed dollar amount of \$364.68. On July 30, 2020, a Notice of Telephone Pre-Hearing Conference was issued scheduling a conference for August 18, 2020. The August 18, 2020, conference took place as scheduled. During the conference, the parties discussed whether or not the July 22, 2020, hearing request should be combined with the January 6, 2020, request for hearing. On August 19, 2020, an Order was issued

¹ The Order found Petitioner's hearing request was received, January 6, 2020, prior to the January 20, 2020, effective date of termination.

² The Order also denied Petitioner's request for a subpoena and request for a meaningful prehearing conference.

indicating the July 22, 2020, issue will be held in abeyance pending the resumption of scheduling in-person hearings. The Order did not address Petitioner's request to hold separate hearings for the two pending issues.

On October 28, 2020, an Order was issued scheduling both prior issues for a telephone pre-hearing conference. The conference was to commence on December 8, 2020. On December 8, 2020, a telephone pre-hearing conference took place as scheduled. On December 11, 2020, an Order was issued ordering the issues to continue being held in abeyance pending MOAHR resuming the scheduling of in-person hearings.

On March 22, 2021, MOAHR, received from Petitioner, a third request for hearing. The request was in regard to a January 5, 2021, negative action notice with a proposed dollar amount of \$354.78. On March 30, 2021, a Notice of Telephone Pre-Hearing Conference was issued scheduling a conference for April 20, 2021, to discuss the third request for hearing.

On April 1, 2021, a Notice of Telephone Pre-Hearing Conference was issued for both of the prior issues, scheduling a conference for April 20, 2021. The April 20, 2021, conference took place as scheduled. During the conference, the parties agreed to combine all three issues into one hearing. On April 26, 2021, an Order was issued scheduling a Zoom hearing for June 16, 2021.

On June 15, 2021, MOAHR, received from Petitioner, a request to adjourn the hearing scheduled for June 16, 2021. On June 16, 2021, an Order was issued granting Petitioner's request and scheduling the hearing for July 27, 2021.

On July 27, 2021, a Zoom hearing was held. Norman Harrison, Attorney, appeared on behalf of the Petitioner. Emily Piggott, Appeals Review Officer, appeared on behalf of the Respondent, the Department of Health and Human Services (Department).

ISSUE

Did the Department properly terminate 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, born [REDACTED] (Exhibit A, p 17; Testimony).
2. Since approximately March of 2011, Petitioner has been receiving HHS benefits from the Department. (Testimony.)

3. Prior to December 9, 2019, Petitioner was approved for and receiving HHS benefits in the amount of \$1,113.91. (Exhibit A, pp 35; Testimony.) The time and task allocation allocated to the total benefit amount was the following:

▪ Bathing	7 days per week	16 minutes a day
▪ Dressing	7 days per week	14 minutes a day
▪ Grooming	7 days per week	8 minutes a day
▪ Housework	7 days per week	12 minutes a day
▪ Laundry	2 days per week	49 minutes a day
▪ Medication	7 days per week	15 minutes a day
▪ Meal Preparation	7 days per week	50 minutes a day
▪ Shopping for Food/Meds	2 days per week	15 minutes a day
▪ Travel for Shopping	2 days per week	4 minutes a day
▪ Bowel Program	7 days per week	60 minutes a day
▪ Catheters or Leg Bags	7 days per week	60 minutes a day ³

4. Prior to December 9, 2019, had the following functional rankings:

▪ Bathing	3
▪ Dressing	3
▪ Grooming	3
▪ Housework	4
▪ Laundry	4
▪ Medication	5
▪ Meal Preparation	5
▪ Shopping for Foods/Meds	5
▪ Travel for Shopping	5
▪ Bowel Program	3
▪ Catheters or Leg Bags	3 ⁴

5. Prior to December 9, 2019, the 54A medical needs form on file indicated Petitioner had a medical need for assistance with bathing, grooming, taking medications, meal preparation, shopping, and laundry, while having complex care needs of bowel movement and catheters or leg bags. The form was completed by Petitioner's Primary Care Physician Dr. Harpal Singh, M.D. (Exhibit A, p 22; Testimony.)

6. On December 9, 2019, an in-home face-to-face assessment took place. Petitioner and Petitioner's HHS Provider participated in the assessment. The Adult Services Worker performing the assessment was new to the case. During the assessment, Petitioner was observed eating at a counter and seating herself on the couch. Both the Petitioner and Petitioner's HHS Provider reported Petitioner performed all Activities of Daily Living (ADL) and most Instrumental Activities of Daily Living (IADL), herself without hands on assistance. It was

³ Exhibit A, p 34.

⁴ Exhibit A, pp 23-24.

reported, Petitioner only required queuing, reminders, and prompting to ensure compliance and completion of activities. (Exhibit A, p 25; Testimony.)

7. Petitioner's Guardian did not participate in the December 9, 2019, assessment. At the time the assessment took place, Petitioner's guardian was caring for her mother and dealing with issues related to the hospitalization of her son. (Exhibit A, p 30; Testimony.)
8. Following the assessment, the Adult Services Worker, questioned whether or not the Petitioner had a medical need to qualify for HHS based on the responses provided during the assessment. (Testimony.)
9. On December 13, 2019, the Department sent Petitioner a Negative Action Notice. The notice indicated a 54A (medial needs) form was needed in order for Petitioner to continue receiving benefits. The Negative Action Notice provided Petitioner with a medical needs form and instruction sheet. (Exhibit A, p 27; Testimony.)
10. Between December 13, 2019, and December 18, 2019, the Adult Services Worker made attempts to contact Petitioner's legal guardian to discuss the need for a medical needs form and the December 9, 2019, assessment. (Exhibit A, p 28, 29; Testimony.)
11. On December 18, 2019, Petitioner's legal guardian contacted the Adult Services Worker and indicated she has been busy taking care of her mom and it had been taking up a lot of her time. The Adult Services Worker explained to the guardian the results of the assessment, specifically the reports that Petitioner was able to perform her ADL's, bowel program and catheter changes independently without the need for hands on assistance. (Exhibit A, p 30; Testimony.)
12. On December 26, 2019, the Department received a completed medical needs form completed by Dr. Singh on behalf of Petitioner. The form indicated Petitioner had a medical need for assistance with meal preparation, shopping, laundry, and housework, and complex care needs of catheters or leg bags and bowel program. The form went on to indicate Petitioner needed monitoring for toileting, bathing and taking medications. (Exhibit A, p 31.)
13. On January 6, 2020, the Department sent Petitioner a Negative Action Notice. The notice indicated Petitioner's HHS case would be terminated effective January 20, 2020, due to Petitioner no longer qualifying for HHS. (Exhibit A, p 32; Testimony.)
14. On January 6, 2020, MOAHR, received from Petitioner, a request for hearing. (See request for hearing in the file.)

15. On February 18, 2020, a telephone pre-hearing conference took place to address Petitioner's January 6, 2020, request for hearing. During the conference, the Department agreed to reinstate Petitioner's HHS benefits pending the outcome of the appeal. (See MOAHR Hearing File.)
16. On or around April 29, 2020, the Department received a medical needs form completed by Dr. Singh on behalf of Petitioner. The form indicated Petitioner had a medical need for toileting, bathing, grooming, taking medications, meal preparation, shopping, laundry, housework, and complex care needs of catheters or leg bags and bowel program. The form went on to indicate Petitioner needed monitoring of her daily grooming, shopping, cleaning, medications, and cooking by her chore provider as Petitioner has history of not completing. An addendum on the form indicated Petitioner needed monitoring of her wound as well and that without monitoring the wound would not heal. (Exhibit 24, p 125.)
17. On June 23, 2020, the Adult Services Worker contacted Petitioner's HHS Provider for a telephone interview. The interview was due to Petitioner's ongoing receipt of HHS benefits pending the outcome of the administrative hearing. During the interview, Petitioner's HHS Provider indicated she doesn't do any prompting or reminders and that she washes dishes, does housework, bathes Petitioner, picks up and sets out medication. During the interview, wound care was mentioned and that the Provider applied solution 2 times a week and dressed the wound 7 days per week. (Exhibit A, p 48; Testimony.)
18. On June 23, 2020, the Adult Services Worker contacted Petitioner for a telephone interview. The interview was due to Petitioner's ongoing receipt of HHS benefits pending the outcome of the administrative hearing. The Petitioner indicated her HHS Provider was now doing more in the house including wound care. Petitioner indicated she was independent with bathing, dressing, grooming, meal preparation, bowel program, catheter program and goes shopping with her Provider 1 day a week. (Exhibit A, p 49.)
19. On June 23, 2020, the Department sent Petitioner a Services Approval notice. The notice indicated Petitioner's HHS benefits were being increased to add wound care 7 days a week at 10 minutes each day. (Exhibit A, pp 50-52; Exhibit 24, p 123.)
20. On June 24, 2020, the Adult Services Worker spoke with Petitioner's legal guardian as part of the telephone interview process. Petitioner's legal guardian reported she had been busy planning for a funeral due to her mother passing. Petitioner's guardian reported Petitioner's wound and that Petitioner's HHS Provider started doing some of the work in the home for Petitioner. Petitioner's guardian specifically indicated the Provider assisted with wound care, laundry, shopping, and housework. (Exhibit A, pp 54, 55⁵.)

⁵ Exhibit A, p 55. "...approved based upon the new assessment conducted on (06/23/20 and 06/24/20)".

21. On June 26, 2020, the Department sent Petitioner an Advance Negative Action notice. The notice indicated Petitioner's proposed HHS allotment amounted to \$403. The allocation of services was as follows:

▪ Laundry	1 day a week	49 minutes per day
▪ Housework	1 day a week	20 minutes per day
▪ Medication	7 days a week	15 minutes per day
▪ Shopping for Food/Meds	1 day a week	35 minutes per day
▪ Travel for Shopping	1 day a week	25 minutes per day
▪ Wound Care	7 days a week	10 minutes per day
▪ Bowel Program	7 days a week	15 minutes per day ⁶

22. On June 30, 2020, the Department sent Petitioner a Negative Action notice. The notice indicated Petitioner's proposed HHS allotment amounted to \$364.68. The allocation of services was as follows:

▪ Laundry	1 day a week	49 minutes per day
▪ Housework	1 day a week	20 minutes per day
▪ Medication	7 days a week	15 minutes per day
▪ Shopping for Food/Meds	1 day a week	35 minutes per day
▪ Travel for Shopping	1 day a week	25 minutes per day
▪ Wound Care	7 days a week	10 minutes per day
▪ Bathing	7 days a week	15 minutes per day
▪ Toileting	7 days a week	15 minutes per day ⁷

23. On July 22, 2020, MOAHR, received from Petitioner, a second request for hearing. The request was in regard to the June 30, 2020, negative action notice with a proposed dollar amount of \$364.68. (Exhibit A, p 55.)

24. On July 30, 2020, a Notice of Telephone Pre-Hearing Conference was issued scheduling a conference for August 18, 2020. (See MOAHR Hearing File.)

25. The August 18, 2020, conference took place as scheduled. (Exhibit 27, p 131.)

26. On August 19, 2020, an Order was issued holding both appealed issues in abeyance pending the resumption of scheduling in-person hearings. (Exhibit 27, p 131.)

27. On October 28, 2020, an Order was issued scheduling both prior issues for a telephone pre-hearing conference. The conference was to commence on December 8, 2020. On December 8, 2020, a telephone pre-hearing conference took place as scheduled. On December 11, 2020, an Order was issued ordering the issues to continue being held in abeyance pending MOAHR resuming the scheduling of in-person hearings.

⁶ Exhibit A, pp 56, 57.

⁷ Exhibit A, p 55.

28. On December 16, 2020, the Adult Services Worker, left messages with Petitioner's guardian indicating a new assessment was due. (Exhibit A, p 65.)
29. On December 16, 2020, the Adult Services Worker contacted Petitioner for a phone interview. Petitioner reported the wound had healed and that she was independent with the bowel program, catheters, meal preparation, bathing, dressing, light housework, and grooming. Petitioner reported her provider did other housecleaning, provided medication, and dressed her wound. (Exhibit A, p 66.)
30. On December 17, 2020, the Adult Services Worker contacted Petitioner's Provider for a phone interview. Petitioner's Provider indicated Petitioner's wound had healed. Petitioner's Provider also indicated she monitors Petitioner to ensure Petitioner buys and prepares nutritious meals, picks up medications, sweeps, vacuums, does laundry, shops, and addresses Petitioner's vaginal bacterial infection. (Exhibit A, p 67.)
31. On December 17, 2020, the Adult Services Worker contacted Petitioner's Guardian. The Guardian reported Petitioner's wound had healed and that Petitioner had a urinary tract infection. (Exhibit A, p 67.)
32. On January 5, 2021, the Department issued a Negative Action notice. The notice indicated Petitioner's proposed HHS allotment amounted to \$354.78. The allocation of services was as follows:
- | | | |
|--------------------------|---------------|---------------------------------|
| ▪ Bathing | 7 days a week | 16 minutes per day |
| ▪ Laundry | 1 day a week | 49 minutes per day |
| ▪ Housework | 1 day a week | 20 minutes per day |
| ▪ Medication | 7 days a week | 15 minutes per day |
| ▪ Shopping for Food/Meds | 1 day a week | 35 minutes per day |
| ▪ Travel for Shopping | 1 day a week | 30 minutes per day ⁸ |
33. On January 21, 2021, MOAHR, received from Petitioner, a request for hearing regarding the January 5, 2021, notice.⁹ (Exhibit 30, pp 137-140.)
34. On March 22, 2021, MOAHR, received from Petitioner, a follow up request for hearing related to their January 21, 2021, filing. (Exhibit 32, p 144.)
35. On March 30, 2021, a Notice of Telephone Pre-Hearing Conference was issued scheduling a conference for April 20, 2021, to discuss the third request for hearing. (See MOAHR Hearing File.)
36. On April 20, 2021, it was agreed to address each of the 3 issues on appeal in one combined hearing. (Exhibit A, pp 5-8.)

⁸ Exhibit A, pp 69-71

⁹ The filing was misplaced/misfiled.

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.¹⁰

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

¹⁰ ASM 101, April 1, 2018, pp 1-2, 5.

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.¹¹

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.

¹¹ ASM 105, January 1, 2018, pp 1, 3.

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 review¹²

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.

¹² ASM 115, January 1, 2018, pp 3-4.

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.¹³

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ASM 135 Home Help Caregivers

* * *

- Home Help warrants are issued as dual-party and mailed to the client's address.

Exception: There are circumstances where a single-party warrant to the individual caregiver only is appropriate, for example, the client is physically or cognitively unable to endorse the warrant. Authorizations to Home Help agency providers are payable to the provider only (single-party).¹⁴

The ASW testified the Petitioner did not qualify for HHS benefits following the December 9, 2019, assessment and a review of the December 26, 2019, medical needs form. The ASW indicated the assessment revealed the Petitioner only required queuing and monitoring for each of the ADL's, IADL's, and complex care needs with the exception of shopping. The medical needs form corroborated the information gathered during the assessment with the exception of the IADL's and the need for assistance with the activities of laundry and housework.¹⁵

Petitioner's arguments related to the first assessment were based on the fact the Petitioner's Guardian was not present, the Petitioner's Provider wasn't allowed an

¹³ ASM 120, February 1, 2019, pp 1-3.

¹⁴ ASM 135, June 1, 2020, p 5.

¹⁵ See Exhibit A, p 31. The ADLs of Toileting and Bathing each indicate Petitioner needs monitoring.

opportunity to respond, and that the ASW did not do a full review of the file and see Petitioner has always received these benefits due to her deteriorating health.

Petitioner's Guardian most likely should have been included in the assessment but was unavailable due to her own ongoing issues with her mother and son.¹⁶ Regardless, the Guardian's participation would not have changed the information found in the medical needs form. Additionally, the testimony provided by the Provider regarding the scheduling of the assessment was questionable and did not appear to be very truthful. On one hand, the Provider went to great lengths during her testimony to paint the Petitioner as having significant mental health issues that prevented Petitioner from being truthful or accountable, but when asked why she didn't follow up with the Guardian following the Petitioner informing her of the scheduled assessment, she explained "she duped me...I fell for [REDACTED]. The Provider indicated she thought Petitioner would follow up and inform the Guardian of the assessment. If the Petitioner were to have the grave mental health issues as identified, a reasonable and responsible person would not have left that responsibility on the Petitioner. The inconsistent testimony of the Provider did not stop here, however. The Provider indicated that during the assessment she wasn't allowed or permitted to explain the performance of the tasks. This specific testimony is troubling because, despite of this, the Provider was allegedly able to communicate a need for wound care. The same wound care that does not show up in the medical needs form or in the corresponding notes until several months later. As for Petitioner's final argument. Past benefit allocation does not guarantee future benefit allocation. So, despite the fact Petitioner may have received or required additional benefits in the past, does not mean going forward Petitioner still requires that same previous benefit allocation. Rules, policies, and conditions all change. It is also not out of the realm of possibility that prior benefit allocations could have been awarded in error. In this case, the benefit allocation at issue must stand on its own.

Despite all of this, the termination notice issued by the Department should be reversed. It appears based upon the information provided, that despite the Petitioner not needing hands on assistance at the time of the notice for eating, toileting, bathing, grooming, dressing, transferring, mobility, taking medications, meal preparation, laundry, housework, catheters, or bowel program, Petitioner still required assistance with Shopping. While Petitioner might not have a need for hands on care for a single ADL, the Petitioner would still qualify for HHS because of the fact she has a complex care need of catheters and bowel program.¹⁷ As a result, the Department should reopen Petitioner's HHS case retroactive to January 20, 2020, and issue benefits commensurate with Petitioner's level of need for assistance with Shopping and Travel for Shopping.

Later, following the June 2020, assessments, the ASW testified an Advanced Negative Action notice was issued allocating benefits. The ASW indicated there was an increase

¹⁶ The ASW's notes and recollection was clearer and more plausible given the fact the events raised actually did occur and the ASW would not have discovered this information except for the fact it was shared with her.

¹⁷ See ASM 120.

in the allotted benefits due to the Petitioner now having a need for wound care. However, the testimony and explanation as to the increase and the reasoning behind the allocations was not very strong or convincing. Based on the evidence provided by the Department, there were 3 action notices issued between June 23, 2020, and June 30, 2020. The first action notice¹⁸ indicates Petitioner's HHS allocation is going up due to wound care being added effective June 1, 2020. The second action notice¹⁹ issued June 26, 2020, indicates Petitioner is approved for HHS with a proposed total amount of \$403.00 effective June 1, 2020. The third action notice²⁰ issued June 30, 2020, indicates Petitioner is approved for HHS with a proposed total amount of \$364.68 effective August 1, 2020.

The Department did not provide any clear explanation as to the second two notices. They never explained why there was a change, or why they have different effective dates. What makes these notices even more problematic is the corresponding medical needs form²¹ dated April 29, 2020, continues to indicate Petitioner needs monitoring for most of her daily grooming, shopping, cleaning, medications and cooking due to Petitioner not completing the tasks. While the figures provided by the Department appear to be accurate based on the information provided to the Department for consideration, there is no telling which figure is/was used or specifically why. As a result, the Department's action notice on appeal should be reversed, and the Department should reassess the Petitioner effective June 1, 2020.

The last issue on appeal is in regard to the Negative Action notice issued January 5, 2021. The Adult Services Worker testified the notice was issued following December 2020 assessments. The only significant changes between the January 5, 2021, notice and the June 2020 notices, appear to be changes made to bathing and the removal of wound care. The testimony and documentation provided, indicates that at this time, the Petitioner required additional hygienic care to treat ongoing vaginal issues and that Petitioner's wound, for at least this moment, had healed to a point it did not require daily care. Like previously, the corresponding medical needs form corroborated the findings of the Adult Services Worker as far as needs.

The Petitioner's Provider provided testimony indicating Petitioner required additional time for several different tasks but failed to provide evidence that the additional time was actually necessary. For instance, the Provider indicated Petitioner went shopping two times a week but failed to provide any testimony to indicate why the Petitioner needed to go shopping two times a week. In addition, as articulated earlier, the Provider also was not very credible. For these reasons, the findings and conclusions reached by the Department in regard to the January 5, 2021, notice should be upheld.

¹⁸ See Exhibit A, p 50.

¹⁹ See Exhibit A, p 56.

²⁰ See Exhibit A, p 55.

²¹ See Exhibit 24, p 125. Exhibit 22, p 121 and Exhibit 24 p 125 are the same with the exception that p 125 shows the addendum found at the bottom.

In addition to the above issues, the Petitioner asked that all mail and notices regarding Petitioner's HHS benefits be sent to Petitioner's Guardian's address of: 7550 Dutch Rd., Saginaw, Michigan 48609. The Department agreed, but to avoid any confusion, this Decision and Order will order the Department to comply with the Petitioner's request. Additionally, and more troubling, is the issue of the HHS warrants. Petitioner requests the Department mail all warrants to the Guardian or the Provider.²² The Petitioner relied on Bridges Administration Manual 110. The Department indicated they cannot comply with this request as the applicable policy²³ does not allow them to send the HHS Warrant to another address other than the Petitioner's unless it is to the Provider as a single-party check and even then, under specific circumstances.

BAM 110 does not specifically address the HHS program, nor does it address HHS warrants. ASM 135 however, does address the HHS program and does address the issuance of HHS warrants. ASM 135 is very clear as to where HHS checks can be sent. In this case, the Department is correct to deny Petitioner's request. HHS warrants must be sent to the address of the Petitioner. Based on the facts of this case, and the fact the Petitioner has a legal guardian appointed to her, the Petitioner appears to meet the requirements to have the HHS warrant sent directly to the Provider. However, in order for this to happen, the warrant must be a single-party check. As a result, Petitioner's request to have the check mailed to the Guardian should be denied.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Departments actions should be affirmed in part and reversed in part.

IT IS THEREFORE ORDERED that:

The Department's January 6, 2020, notice is reversed. The Department must initiate the process of reopening Petitioner's HHS case retroactive to January 20, 2020, and issue benefits commensurate with Petitioner's level of need for assistance with Shopping and Travel for Shopping effective January 20, 2020.

The Department's June 26, 2020, and June 30, 2020, action notices on appeal is reversed, and the Department should reassess the Petitioner effective June 1, 2020, and issue retroactive benefits if appropriate.

The Department's January 5, 2021, notice is upheld and does not require any further action other than to seek recoupment if applicable and necessary.

The Department is ordered to mail all future HHS notices and documents with the exception of HHS warrants to Petitioner's Guardian at: 7550 Dutch Rd., Saginaw, Michigan 48609.

²² Petitioner asks that if the HHS warrant is mailed to the Provider, they request the check still be a dual-party check.

²³ ASM 135.

The Department's decision to deny Petitioner's request to have HHS warrants mailed to any other address other than Petitioner's is affirmed.²⁴

CA/dh



Corey Arendt
Administrative Law Judge
for Elizabeth Hertel, Director
Department of Health and Human Services

²⁴ If the Petitioner requests HHS warrants be mailed to the Provider, this may be acceptable to the Department if the check is converted into a single-party check and the Petitioner meets the applicable criteria for the change. See ASM 135.

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

Elisa Daly
411 East Genesee
PO Box 5070
Saginaw, MI 48607

DHHS Department Rep.

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

Authorized Hearing Rep.

[REDACTED]
[REDACTED] MI [REDACTED]

Agency Representative

Emily Piggott
222 N Washington Square
Suite 100
Lansing, MI 48909

Petitioner

[REDACTED]
[REDACTED] MI [REDACTED]

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