

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: April 28, 2020
MOAHR Docket No.: 20-000187
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 March 3, 2020. [REDACTED], Benefit Resource Specialist, Community Living Services, and Authorized Hearing Representative (AHR), represented the Petitioner. [REDACTED], the Petitioner, was present. [REDACTED], sister and caregiver, appeared as a witness for Petitioner. Allison Pool, Appeals Review Officer, represented the Department of Health and Human Services (Department). Wynikki Bass, Adult Services Worker (ASW), and Kelly Williams, 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. 1-50.

ISSUE

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

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 20, 2011. (Exhibit A, p. 9)
2. Petitioner lives with adult family members. (Exhibit A, p. 10)
3. Petitioner's sister is his HHS caregiver. (Exhibit A, pp. 16-24)

4. Petitioner was receiving 40 hours and 29 minutes of HHS per month, with a total care cost of \$ [REDACTED], for assistance with bathing, dressing, toileting, housework, laundry, medication, meal preparation, shopping, and travel for shopping. (Exhibit A, pp. 17-18)
5. On November 20, 2019, the ASW completed a home visit for a review of the HHS case. Petitioner and his sister/caregiver were present. Petitioner's functional abilities and needs for assistance were discussed. (Exhibit A, p. 16; ASW Testimony)
6. The ASW determined that HHS hours for bathing and meal preparation, would be increased; HHS hours for grooming would be added; HHS hours for medications would decrease; and the HHS hours for dressing and toileting would be eliminated. (Exhibit A, pp. 18 and 20; ASW Testimony)
7. The new authorization was for 30 hours and 27 minutes of HHS per month, with a total care cost of \$ [REDACTED], for assistance with bathing, grooming, housework, laundry, medication, meal preparation, shopping, and travel for shopping. (Exhibit A, pp. 19-20)
8. On December 6, 2019, an Advance Negative Action Notice was issued to Petitioner stating the HHS authorization would be reduced to \$ [REDACTED] per month effective January 1, 2020, based on Petitioner stating that he bathes, toilets, grooms (teeth brushing), and dresses on his own during the six month review. Bathing was kept as the caregiver cleans up after Petitioner and ensures the water temperature is suitable. (Exhibit A, p. 7)
9. Effective January 1, 2020, the total monthly care cost increased to \$ [REDACTED] due to an increase in the hourly payment rate. (Exhibit A, pp. 21-22)
10. Petitioner's Request for Hearing was received by the Michigan Office of Administrative Hearings and Rules (MOAHR) on January 16, 2020. (Exhibit A, pp. 6-8)
11. Effective April 1, 2020, the total monthly care cost increased to \$ [REDACTED] due to an increase in the hourly payment rate. (Exhibit A, pp. 23-27)

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) 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

Petitioner was receiving 40 hours and 29 minutes of HHS per month, with a total care cost of \$ [REDACTED], for assistance with bathing, dressing, toileting, housework, laundry, medication, meal preparation, shopping, and travel for shopping. (Exhibit A. pp. 17-18)

On November 20, 2019, the ASW completed a home visit for a review of the HHS case. Petitioner and his sister/caregiver were present. For this review, it was noted that the ASW directed Petitioner to speak for himself, rather than his sister speaking for him. However, the ASW spoke with Petitioner's sister when Petitioner did not have an answer for questions as well as at the end regarding what assistance she provides with bathing and grooming. It was confirmed that Petitioner currently works at Boston Market three to four times per week for up to three hours. With instruction, Petitioner does dishes, cleans, and prepares food. Petitioner does not receive assistance with medical needs at work. Petitioner also reported that he dresses himself each day, showers on his own, and brushes his teeth on his own. The ASW understood that Petitioner needs hands on assistance with hair combing/brushing and cutting his nails. While Petitioner's sister had concerns with Petitioner not brushing his teeth thoroughly, it was stated that Petitioner does not allow his sister to assist with this. The ASW also understood that Petitioner only takes one medication, Wellbutrin. Needs for assistance with medications and shopping were also noted. (Exhibit A, p. 16; ASW Testimony)

The ASW determined that HHS hours for bathing and meal preparation, would be increased; HHS hours for grooming would be added; HHS hours for medications would decrease; and the HHS hours for dressing and toileting would be eliminated. (Exhibit A, pp. 18 and 20; ASW Testimony) The new authorization was for 30 hours and 27 minutes of HHS per month, with a total care cost of \$ [REDACTED], for assistance with bathing, grooming, housework, laundry, medication, meal preparation, shopping, and travel for shopping. (Exhibit A, pp. 19-20) Accordingly, on December 6, 2019, an Advance Negative Action Notice was issued to Petitioner stating the HHS authorization would be reduced to \$ [REDACTED] per month (the net HHS payment amount) effective January 1, 2020, based on Petitioner stating that he bathes, toilets, grooms (teeth brushing), and dresses on his own during the six month review. Bathing was kept as the caregiver cleans up after Petitioner and ensures the water temperature is suitable. (Exhibit A, pp. 7 and 19-20)

Petitioner's AHR testified that Petitioner's mother and Durable Power of Attorney called and asked her to help with completing the hearing request because she did not agree with the reductions every six months. However, Petitioner's AHR was not aware that Petitioner's mother lives in Georgia. Petitioner's mother was concerned with Petitioner

being asked questions directly during the home visit. Petitioner has Autism and may not know how to answer correctly. They have a lot of issues with Petitioner thinking and saying he can do things for himself. (AHR Testimony)

Petitioner's sister also testified that Petitioner thinks he can do things for himself that he really cannot. Petitioner's sister stated that she did not have a voice during the home visit meeting. When asked what parts of the changes to the HHS authorization she disagreed with, Petitioner's sister stated she disagreed with grooming and indicated Petitioner needs reminders and supervision with teeth brushing. (Sister Testimony) However, the ASW's note from the November 20, 2019, home visit shows that Petitioner's sister did have an opportunity to provide information as her concerns regarding Petitioner brushing his teeth were noted. (Exhibit A, p. 16) Further, under the above ASM policies, HHS hours would not be added for a task that Petitioner only receives reminders and supervision with and does not allow the caregiver to provide hands on assistance with.

Additionally, Petitioner's sister noted that regarding toileting, she has to assist with cleaning up both Petitioner and the bathroom after Petitioner is finished. Regarding dressing, the assistance that is provided was described as functional ranking level 2, such as reminders to get dressed and change his shirt as well as making sure the shirt is lined up correctly for buttoning. (Sister Testimony)

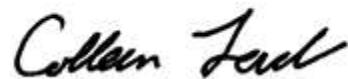
Overall, the available evidence supports that reduction to Petitioner's HHS authorization is in accordance with Department policy. The ASW's notes and testimony regarding what was reported during this home visit are found credible. The ASW increased/added HHS hours for some activities and decreased/eliminated HHS hours for other activities based on the discussion of Petitioner's functional abilities and needs for assistance during the home visit. HHS hours would not be authorized for assistance at functional ranking level 2 (supervising, assisting, reminding, guiding, prompting, etc.)

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly reduced Petitioner's HHS authorization based on the information available at the time of this assessment.

IT IS, THEREFORE, ORDERED that:

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



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

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Petitioner

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