

GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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

Date Mailed: July 1, 2020
MOAHR Docket No.: 20-001255
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 April 8, 2020. [REDACTED], the Petitioner, appeared on her own behalf. Kim Moerke, Manager Appeals and Grievance Department, represented the Respondent Integrated Care Organization, Molina Dual Options (Molina or ICO). Justin Williams, Director of Healthcare Services for the Medicare Medicaid Plan; Ismael Bustamante, Supervisor Pre-Services Appeals and Grievance Department; Jamar Johnson, Lead for the Appeal and Grievance Department; and Melissa Love, Manager Healthcare Services Department, appeared as witnesses for Molina.

During the hearing proceeding, the ICO's Hearing Summary Packet was admitted as Exhibit A, pp. 1-29 and Petitioner's Hearing Request was admitted as Exhibit 1, pp. 1-5.

ISSUE

Did the ICO properly reduce Petitioner's personal care services hours?

FINDINGS OF FACT

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

1. Respondent is an Integrated Care Organization (ICO) contracted by the Michigan Department of Health and Human Services (Department or DHHS) and the Centers for Medicare & Medicare Services (CMS) to provide covered services through the MI Health Link managed care program.

2. Petitioner is a Medicaid/Medicare beneficiary who was enrolled into Respondent's MI Health Link program.
3. Petitioner was originally assessed by a Care Coordinator on June 10, 2019. (Director of Healthcare Services Testimony)
4. Petitioner was authorized for 19 hours and 45 minutes of personal care services per week. (Exhibit A, p. 1)
5. The Care Coordinators for the Personal Care Services Department were re-trained at the end of 2019 so that they would have better knowledge of the contracts that the ICO is obligated to follow. (Director of Healthcare Services Testimony)
6. On December 16, 2019, a Notice of Authorization of Services was issued stating Petitioner was approved for 79 units per week of Personal Care Services from December 15, 2019, through January 31, 2020. (Exhibit A, p. 24)
7. On December 23, 2019, the ICO completed a re-assessment with Petitioner. The assessment indicated the previously authorized units were above what the minimum operating standards allow. The main differences were that Petitioner was able to get up, ambulate, and transfer using an assistive device rather than assistance from another person. Petitioner was also independent with her medications at the time of this assessment. Regarding meal preparation, it was understood that Petitioner's daughter lives in the flat above and prepares one meal for the entire family. The time for laundry was reduced because it was found that Petitioner is able to fold clothes and put things away. The appropriate amount of personal care services was determined to be 11 hours per week. (Exhibit A, pp. 1; Director of Healthcare Services Testimony)
8. On January 16, 2020, a Notice of Denial of Medical Coverage was issued to Petitioner stating the personal care services hours would be reduced to 11 hours per week, based on the December 23, 2019, assessment. (Exhibit A, pp. 8-16)
9. On February 25, 2020, the Michigan Office of Administrative Hearings and Rules ("MOAHR") received Petitioner's request for hearing. (Exhibit 1, pp. 1-5)
10. Petitioner also requested an internal appeal on an unknown date. (Exhibit A, p. 18).
11. On March 3, 2020, a Notice of Appeal Decision was issued stating the decrease of personal care service hours was in compliance with the minimum operating standards suggested Activity of Daily Living (ADL)/Instrumental Activity of Daily Living (IADL) ranking(s) as well as the

time allocations associated with each respective ranking. (Exhibit A, pp. 17-21; Director of Healthcare Services Testimony)

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 Social Welfare Act, the Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

Effective March 1, 2015, the Michigan Department of Health and Human Services (MDHHS), in partnership with the Centers for Medicare & Medicaid Services (CMS), implemented a new managed care program called MI Health Link. This program integrates into a single coordinated delivery system all physical health care, pharmacy, long term supports and services, and behavioral health care for individuals who are dually eligible for full Medicare and full Medicaid. The goals of the program are to improve coordination of supports and services offered through Medicare and Medicaid, enhance quality of life, improve quality of care, and align financial incentives. *Medicaid Provider Manual (MPM), MI Health Link, January 1, 2020, p. 1.*

In implementing the program, MDHHS and CMS have signed a three-way contract with managed care entities called Integrated Care Organizations (ICOs) to provide Medicare and Medicaid covered acute and primary health care, pharmacy, dental, and long term supports and services (nursing facility and home and community based services). *Medicaid Provider Manual (MPM), MI Health Link, January 1, 2020, p. 1.* Respondent is one of those ICOs. Services that may be provided through Respondent and the MI Health Link program include Medicaid State Plan services, including personal care services. *Medicaid Provider Manual (MPM), MI Health Link, January 1, 2020, p. 5.*

Regarding State Plan Personal Care Services, the Medicaid Provider manual states:

5.1 STATE PLAN PERSONAL CARE SERVICES

For individuals enrolled in the MI Health Link program, State Plan personal care services will be provided and paid for by the ICO and will no longer be provided through the Medicaid Home Help program. Personal care services are available to individuals who require hands-on assistance in activities of daily living (ADLs) (i.e., eating, toileting, bathing, grooming, dressing, mobility, and transferring) as well as hands-on assistance in instrumental activities of daily living (IADLs) (i.e., personal laundry, light housekeeping, shopping, meal preparation and cleanup, and medication administration).

Personal care services are available to individuals living in their own homes or the home of another. Services may also

be provided outside the home for the specific purpose of enabling an individual to be employed.

Providers shall be qualified individuals who work independently, contract with, or are employed by an agency. The ICO may directly hold provider agreements or contracts with independent care providers of the individual's choice, if the provider meets MDHHS qualification requirements, to provide personal care services. Individuals who currently receive personal care services from an independent care provider may elect to continue to use that provider. The individual may also select a new provider if that provider meets State qualifications. Paid family caregivers will be permitted to serve as a personal care provider in accordance with the state's requirements for Medicaid State Plan personal care services.

5.1.B. ASSESSMENT REQUIREMENTS

During the Level I Assessment, ICO Care Coordinators (or designee who meets the qualifications for an ICO Care Coordinator) must consider if the individual may need personal care services. If the ICO Care Coordinator believes the individual may be eligible for MI Health Link personal care services, the ICO Care Coordinator will conduct the Personal Care Assessment. The face-to-face, comprehensive assessment is the basis for determining and authorizing the amount, scope and duration, and payment of services. The individual needs to be reassessed at least quarterly or with a change of functional and/or health status to determine and authorize the amount, scope and duration, and payment of services. The reassessment must be face-to-face.

ADLs and IADLs are ranked by the ICO Care Coordinator during the Personal Care Assessment. Through the assessment, ADLs and IADLs are assessed according to the following five point scale, where 1 is totally independent and 5 requires total assistance.

Independent	The individual performs the activity with no human assistance.
Verbal assistance	The individual performs the activity with verbal assistance such as

	reminding, guiding or encouraging.
Minimal human assistance	The individual performs the activity with some direct physical assistance and/or assistance technology.
Moderate human assistance	The individual performs the activity with a great deal of human assistance and/or assistive technology.
Dependent	The individual does not perform the activity even with human assistance and/or assistance technology.

An individual must be assessed with need for assistance with at least one ADL to be eligible to receive personal care services. Payment for personal care services may only be authorized for needs assessed at the level three (3) ranking or greater. In addition, the individual must have an ADL functional ranking of three (3) or greater to be eligible for IADL services. Once an individual is determined eligible for personal care services, his/her authorized ADL and IADL services and the amount, scope and duration must be included in the Individual Integrated Care and Supports Plan (IICSP).

5.1.D. REASONABLE TIME AND TASK

When a task (activity) is assigned to a specific provider, the rank of the activity is used against a Reasonable Time Schedule (RTS) table to determine the recommended time that activity should be assigned. Providers should use the RTS table provided by MDHHS to record and report minutes spent delivering services. The maximum amount is across all assigned providers for an individual, so these are case maximums. When an individual's needs exceed the hours recommended by the RTS, a rationale must be provided and maintained in the individual's record.

5.1.F. REIMBURSEMENT AND RATES

After enrollment and according to the requirements of the three-way contract, the ICO must maintain the individual's current personal care providers and amount, scope and duration of services until the IICSP is reviewed and updated and providers are secured with individual approval. An ICO should use the Medicaid Home Help Payment Schedule to continue paying providers as scheduled. (Refer to the Directory Appendix for additional information.) An ICO should follow this schedule until the ICO and personal care provider agree upon a new payment schedule, which should be defined in the contract between the ICO and the personal care provider. The ICO must publish a pay cycle and must pay these claims on the next available pay cycle date.

Furthermore, an ICO should use the Individual and Agency County Rates to determine payment rates for the transition period until the ICO and personal care provider agree upon a rate that is defined in the ICO and personal care provider contract. (Refer to the Directory Appendix for additional information.)

After the transition period, payment rates for personal care services are established by the ICO. Tasks are assigned minute values which are converted to hours and billed as a total at the end of the ICO's preferred pay period. Reimbursement is subject to any state or federal laws that may be applicable in the future.

A request for higher or lower hours than shown on the RTS is permissible. A textual rationale is required if the amount of services needed is different than the RTS. Possible reasons for using higher hours include incontinence, severely impaired speech, paralysis and obesity. Possible reasons for lower hours include shared living arrangements (specifically for IADLs, except for administering medications) and responsible relatives able and available to assist.

If the individual does not require the maximum allowable hours for IADLs, only the amount of time needed for each task shall be authorized. Assessed hours for IADLs (except medication administration) must be **prorated by one half** in shared living arrangements where other adults reside in the home as personal care services are only for the benefit of the individual. 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 enrolled individual are completed separately from others in the home, hours for IADLs do not need to be prorated.

5.1.G. RESPONSIBLE RELATIVES AND GUARDIANS

Adult children (18 years of age or older) may provide personal care services to a parent. An individual's spouse cannot be paid to provide personal care services to the individual as they are considered responsible relatives. Couples who are separated must provide verification that they are no longer residing in the same home. Verification may include a driver's license, rent receipt or utility bill reflecting their separate mailing address. A spouse who is legally separated from a spouse cannot be paid to provide personal care services. ADLs may be approved when an individual's spouse is unavailable or unable to provide these services. "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.

Shopping, laundry, or light housecleaning shall not be approved when a responsible relative of the individual resides in the home unless they are unavailable or unable to provide these services. These findings must be documented.

*Medicaid Provider Manual (MPM),
MI Health Link, January 1, 2020, pp. 5-9.*

Petitioner was originally assessed by a Care Coordinator on June 10, 2019. (Director of Healthcare Services Testimony) Petitioner was authorized for 19 hours and 45 minutes of personal care services per week. (Exhibit A, p. 1)

The Care Coordinators for the Personal Care Services Department were re-trained at the end of 2019 so that they would have better knowledge of the contracts that the ICO is obligated to follow. (Director of Healthcare Services Testimony)

On December 23, 2019, the ICO completed re-assessment with Petitioner. The assessment indicated the previously authorized units were above what the minimum operating standards allow. The main differences were that Petitioner was able to get up,

ambulate, and transfer using an assistive device rather than assistance from another person. Petitioner was also independent with her medications at the time of this assessment. Regarding meal preparation, additional time would typically be allotted if there is a special diet that needs to be prepared for the member outside of the normal meal. It was understood that Petitioner's daughter lives in the flat above and prepares one meal for the entire family. It was indicated that Petitioner's daughter was considered a responsible relative. The time for laundry was reduced because it was found that Petitioner is able to fold clothes and put things away. The hours for bathing, grooming, and dressing were not changed and reflect the full reasonable time schedule amount. The appropriate amount of personal care services was determined to be 11 hours per week. (Exhibit A, pp. 1; Director of Healthcare Services Testimony) It was noted that when another Care Coordinator was sent out after the appeal, the findings were the same as the December 23, 2019, assessment. (Director of Healthcare Services Testimony)

Petitioner explained that she lives in a two-family house. There are separate entrances, separate leases, separate light bills, kitchens/stoves, etc. When the Care Coordinator came to her home, Petitioner's grandchild was there, but the kids live upstairs. Petitioner told the Care Coordinator that the kids usually eat fast food. Petitioner's daughter prepares meals separately for Petitioner and they are prepared in Petitioner's kitchen, not upstairs. During the assessment, Petitioner was asked if she could use a microwave and answered that she could. But the Care Coordinator did not ask Petitioner if she does use the microwave. When the second Care Coordinator came out, Petitioner explained that she had put something in the microwave and blew up the microwave. Petitioner's daughter had removed the microwave from her home before the Care Coordinator came for the assessment. Petitioner also told the Care Coordinator that the day she came was a good day for her. Petitioner acknowledged that she got up during the assessment. However, Petitioner had to get up from the couch because of her leg and suggested they move to the dining room table. Petitioner is a heavier woman and the Care Coordinator was so small that she would not have been able to help Petitioner. Petitioner utilized the walker that was right in front of her and made it to the dining room table. Petitioner also noted that her clothes are washed way more often than the hours that are authorized. Petitioner stated she asked why her time was cut and the second Care Coordinator stated it was because Petitioner's daughter lives in the same building/house as Petitioner. Petitioner testified that she cannot always get to the bathroom like a smaller person. Regarding medications, there have been several times Petitioner over or underdosed herself. Petitioner's daughter also checks Petitioner's sugar twice per day. (Petitioner Testimony) The letter from Petitioner's caregiver describes the types of daily assistance provided to Petitioner. (Exhibit 1, pp. 1-2) A DHS-54A Medical Needs form completed by Petitioner's doctor documented diagnoses of bilateral leg pain with difficulty walking, hypertension, diabetes, obesity, depression, and osteoarthritis bilateral shoulders. It was marked that Petitioner had a medical need for assistance with the personal care activities listed below and except for eating, all of the list activities were circled. (Exhibit 1, p. 5)

Overall, the available evidence does not support that the ICO's determination to reduce Petitioner's personal care services hours was in accordance with MPM policy. For example, the testimony of the Director of Healthcare Services indicated the ICO gave Petitioner the full reasonable time schedule times for ADLs based on her rankings. However, the MPM policy states that the reasonable time schedule is to be used as a guide and allows for a request for higher (or lower hours) than shown on the reasonable time schedule so long as a rationale is provided. Possible reasons for using higher hours are listed in the policy, including obesity and incontinence. The evidence indicates Petitioner is obese and has some incontinence. The letter from Petitioner's caregiver indicates bathing/daily hygiene tasks consume a significant portion of time. (Exhibit 1, p. 1) It is not clear if the actual amount of time it takes to complete these ADLs was discussed during the assessment. It is also not known whether the personal care services provider was interviewed as part of this assessment. Regarding lower amounts of hours, the MPM policy indicates less time may be authorized in shared living situations (specifically for IADLs except for medications) or when a responsible relative is able and available to assist. However, the MPM policy specifies that the proration of the hours for IADLs does not apply to situations where others live in adjoined apartments, flats or in a separate home on shared property and there is no shared common living area. It is also not clear that an adult daughter would be considered a responsible relative under the above cited MPM policy. In the section addressing responsible relatives, the policy states that adult children may provide personal care services, but spouses cannot be paid to provide personal care services because they (spouses) are considered responsible relatives. The testimony of the Director of Healthcare Services indicated the ICO reduced the meal preparation time because Petitioner's daughter is considered a responsible relative. If Petitioner's daughter is not the personal care services provider, but does prepare at least some of Petitioner's meals, a reduction to the meal preparation hours is appropriate. However, if Petitioner's daughter is a provider of the authorized personal care services, and she prepares Petitioner's meals separately in Petitioner's home, it does not appear that the reduction to meal preparation hours is appropriate. Further, review of the determination to reduce Petitioner's personal care services hours is somewhat difficult due to the limited information provided regarding the assessment. For example, Petitioner's testimony contradicted some of the information in the Director of Healthcare Service's testimony referencing notes from the assessments. However, the Care Coordinator(s) that performed the assessment(s) were not present to provide testimony. The referenced notes regarding the assessments or other documentation from the assessments was not submitted. No documentation of the rankings or times allotted for each activity included in Petitioner's personal care services authorization was provided. It also appears that Petitioner's personal care service hours were reduced prior to the December 23, 2019, assessment. A December 16, 2019, a Notice of Authorization of Services was issued stating Petitioner was approved for 79 units per week of Personal Care Services from December 15, 2019, through January 31, 2020. (Exhibit A, p. 24) Lastly, there were multiple references to ICO relying on the minimum operating standards. However, no copy of the minimum operating standards was included in the ICO's Hearing Summary Packet.

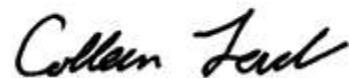
DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, decides that the ICO improperly reduced Petitioner's personal care services authorization based on the available information.

IT IS, THEREFORE, ORDERED that:

The ICO's decision is **REVERSED**. The ICO shall initiate completing a re-assessment for Petitioner's personal care services, with Petitioner's personal care services authorization being reinstated to the previously authorized amount while the reassessment is pending.

CL/dh



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

Managed Care Plan Division
CCC, 7th Floor
Lansing, MI 48919

Community Health Rep

Molina Healthcare of Michigan
Chasty Lay
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Petitioner

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