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Date Mailed: June 9, 2020
MOAHR Docket No.: 20-001510
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Robert J. Meade

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.*, upon Petitioner's request for a hearing.

After due notice, a hearing was held on June 9, 2020. Petitioner appeared and testified on her own behalf. Theresa Root, Appeals Review Officer (ARO), appeared on behalf of Respondent, Michigan Department of Health and Human Services (MDHHS or Department). Kandace Wright, Adult Services Worker (ASW) and Vivian Hurst, Adult Services Supervisor, appeared as witnesses for the Department. Leigha Burghdoff, ARO appeared as an observer for the Department.

ISSUE

Did the Department properly deny Petitioner's Home Help Services (HHS) application and seek recoupment against Petitioner for a prior HHS case where the provider quit?

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 [REDACTED]-year-old Medicaid beneficiary, born [REDACTED], who applied for HHS in November 2019. (Exhibit A, p 10; Testimony)
2. Petitioner is partially blind in her left eye and suffers from depression. (Exhibit A, p 10; Testimony)
3. On November 18, 2019, the ASW went to Petitioner's home and completed a comprehensive assessment with Petitioner and her daughter provider. During the assessment, the ASW determined that Petitioner did not have a need for hands on assistance with any Activities of Daily Living (ADL), functional ranking 3 or greater, but may have a need for assistance with the Instrumental Activities of Daily Living (IADL's) of housework, laundry and

shopping. The ASW noted that Petitioner was observed walking and transferring independently without the use of any adaptive equipment. Petitioner does have a single cane but did not use it during the assessment and it was not visible to the ASW. Petitioner informed the ASW that she needed assistance getting in and out of the tub to bathe, but the ASW did not find this credible after observing Petitioner move about the home freely during the assessment. (Exhibit A, p 10; Testimony)

4. A Medical Needs form completed by Petitioner's physician was not part of the evidence packet submitted by the Department. (Exhibit A; Testimony)
5. On December 3, 2019, the ASW sent Petitioner a Negative Action Notice indicating that HHS was denied based on the policy requiring a need for hands on assistance with at least one ADL, functional ranking 3 or greater. (Exhibit A, p 7; Testimony)
6. On January 30, 2020, the Department sent Petitioner a Second Collection Notice relating to a recoupment action from a prior HHS case Petitioner had opened. The notice contained Petitioner's appeal rights. (Exhibit A, p 8; Testimony)
7. The recoupment action arose because during a home visit on July 1, 2019, Petitioner informed the ASW that her provider had quit on her back on May 1, 2019. The ASW placed a stop payment on Petitioner's HHS case until a new provider could be enrolled, but the Department continued to pay Petitioner and her provider for HHS in May 2019 and June 2019. (Exhibit B, pp 4-5)
8. On March 3, 2020, Petitioner's hearing request was received by the Michigan Office of Administrative Hearings and Rules. (Exhibit 1)

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.

ASM 105 ELIGIBILITY CRITERIA

GENERAL

Requirements

Home help eligibility requirements include **all** of the following:

- Medicaid eligibility.
- Certification of medical need.
- Need for service, based on a complete comprehensive assessment indicating a functional limitation of level 3 or greater for at least one activity of daily living (ADL).
- Appropriate Program Enrollment Type (PET) status.

Medical Need Certification

Medical needs are certified utilizing the DHS-54A, Medical Needs form and must be completed by a Medicaid enrolled medical professional. The medical professional must hold one of the following professional licenses:

- Physician (M.D. or D.O.).
- Physician Assistant.
- Nurse practitioner.
- Occupational therapist.
- Physical therapist.

The DHS-54A or veterans administration medical form are acceptable for individuals treated by a VA physician; see ASM 115, Adult Services Requirements.

Necessity For Service

The adult services worker (ASW) is responsible for determining the necessity and level of need for home help services based on all of the following:

- Client choice.
- A completed MDHHS-5534, Adult Services Comprehensive Assessment. An individual must be assessed with at least one activity of daily living (ADL) in order to be eligible to receive home help services.

*Adult Services Manual 105
January 1, 2018, pp 1, 3
Emphasis added*

ASM 115 ADULT SERVICES REQUIREMENTS

COMPREHENSIVE ASSESSMENT (MDHHS-5534)

Conduct a face-to-face interview with the client in their home to assess the personal care needs. Complete the MDHHS-5534, Adult Services Comprehensive Assessment, which is generated from MiAIMS; see ASM 120, Adult Services Comprehensive Assessment.

CONTACTS

The ASW must, at a minimum, have a face-to-face interview with the client, prior to case opening, then every six months in the client's home, at review and redetermination.

*Adult Services Manual 115
January 1, 2018, p 3*

ASM 120 ADULT SERVICES COMPREHENSIVE ASSESSMENT

INTRODUCTION

The MDDHS-5534, Adult Services Comprehensive Assessment, is the primary tool for determining need for services. The comprehensive assessment must be completed on all open home help services cases.
Michigan Adult Integrated Management System (MiAIMS), provides the format for the comprehensive assessment and all information must be entered on the computer program.

Functional Abilities Tab

The **Functional** Tab under **Assessment** module of MiAIMS is the basis for service planning and for the home help services payment.

Document the client's abilities and needs in the functional abilities tab to determine the client's ability to perform the following activities:

Activities of Daily Living (ADL)

- Eating.
- Toileting.
- Bathing.
- Grooming.
- Dressing.
- Transferring.
- Mobility.

Instrumental Activities of Daily Living (IADL)

- Taking Medication.
- Meal preparation and cleanup.
- Shopping.
- Laundry.
- Light housework.

Functional Scale

ADLs and IADLs are assessed according to the following five point scale:

1. Independent.

Performs the activity safely with no human assistance.

2. Verbal assistance.

Performs the activity with verbal assistance such as reminding, guiding or encouraging.

3. Some human assistance.

Performs the activity with some direct physical assistance and/or assistive technology.

4. Much human assistance.

Performs the activity with a great deal of human assistance and/or assistive technology.

5. Dependent.

Does not perform the activity even with human assistance and/or assistive technology.

Home help payments may only be authorized for needs assessed at the level 3 ranking or greater.

An individual must be assessed with at least one activity of daily living ranked 3 or higher or a complex care need 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.

*Adult Services Manual 120
January 1, 2018, pp 1-3
Emphasis added*

Adult Services Manual (ASM) 101, 04-01-2018, addresses the issue of covered HHS services:

Payment Services Home Help

Home help services are non-specialized personal care service activities provided under the independent living 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.

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).

Adult Services Manual (ASM) 135, 10-01-2019, addresses responsibilities of home help providers:

CAREGIVER INTERVIEW

An initial face-to-face interview must be completed with all Home Help caregiver(s). A face-to-face or phone contact must be made with the caregiver(s) at the six month review to verify services are being furnished. If phone contact was made at the last review, a face-to-face contact with the caregiver is mandatory for the next review. The ASW must document the contact in MiAIMS by selecting face to face-client and provider or face to face-provider under the *contact* tab.

The caregiver must present a picture identification (ID) card that includes his/her name for verification. Picture ID may include driver's license/state ID, passport or employee ID. Expired IDs are acceptable as long as identity can be verified by the adult services worker.

Explain the following points to the client and the caregiver(s) during the initial interview:

- The client and/or individual caregiver is responsible for notifying the ASW within **10 business days** of any change; including but not limited to hospitalizations, nursing home or adult foster care admissions.
- The client and/or individual caregiver is responsible for notifying the ASW within **10 business days** of a change in individual caregiver

or discontinuation of services. Payments must **only** be authorized to the individual/agency providing approved services.

- Home Help warrants can **only** be endorsed by the individual(s) listed on the warrant.
- Home Help warrants are issued only for the individual/agency named on the warrant as the authorized caregiver.
- If the individual named on the warrant does not provide services or provides services for only a portion of the authorized period, the warrant must be returned.

Note: Failure to comply with any of the above **may** be considered fraudulent or require recoupment.

- Any payment received for Home Help services **not** provided must be returned to the State of Michigan.
- Accepting payment for services not rendered is fraudulent and could result in criminal charges.

HOME HELP STATEMENT OF EMPLOYMENT (MSA-4676)

The purpose of the MSA-4676, Home Help Services Statement of Employment, is to serve as an agreement between the client and provider which summarizes the general requirements of employment. The form is completed by the adult services worker as part of the provider enrollment process.

An employment statement must be signed by **each** individual caregiver/agency provider who renders service to a client.

The statement of employment does the following:

- Requires the individual caregiver/agency provider to repay the State of Michigan for services he or she did not provide.

Adult Services Manual (ASM) 165, 04-01-2019, addresses the issue of recoupment:

GENERAL POLICY

The Michigan Department of Health and Human Services (MDHHS) is responsible for determining accurate payment for services. When payments are made in an amount greater than allowed under department policy an overpayment occurs. When an overpayment is discovered, corrective actions must be taken to prevent further overpayment and to recoup the overpayment amount.

OVERPAYMENT TYPES

The overpayment type identifies the cause of an overpayment:

- Client errors.
- Provider errors.
- Administrative or departmental errors.
- Administrative hearing upheld the department's decision.

Appropriate action must be taken when any of these overpayments occur.

Client Errors

A client error occurs when the client receives additional benefits than they were entitled to because the client provided incorrect or incomplete information to MDHHS.

A client error also exists when the clients timely request for a hearing results in deletion of a negative action issued by the department and one of the following occurs:

- The hearing request is later withdrawn.
- The Michigan Administrative Hearing Services (MAHS) denies the hearing request.
- The client or authorized representative fails to appear for the hearing and MAHS gives the department written instructions to proceed with the negative action.

Client error can be deemed as intentional or unintentional. If the client error is determined to be intentional, see ASM 166, Fraud - Intentional Program Violation.

Unintentional Client Overpayment

Unintentional client overpayments occur with either of the following:

- The client is unable to understand and/or perform their reporting responsibilities to the department due to physical or mental impairment.
- The client has a justifiable explanation for not giving correct or full information.

All instances of unintentional client error must be recouped. **No fraud referral is necessary.**

Caregivers and Agency Provider Errors

Individual caregiver or agency providers are responsible for correct billing procedures. Individual caregivers and agency providers must bill for hours and services delivered to the client that have been approved by the adult services worker. Individual caregivers and agency providers are responsible for refunding overpayments resulting from an inaccurate submission of hours. Failure to bill correctly or refund an overpayment is an individual caregiver or agency provider error.

Example: Client was hospitalized for several days and the individual caregiver or agency provider failed to report changes in service hours resulting in an overpayment.

Individual Caregiver and agency provider errors can be deemed as intentional or unintentional. If the individual caregiver or agency provider error is determined to be intentional; see ASM 166, Fraud - Intentional Program Violation.

All instances of unintentional provider error must be recouped. **No fraud referral is necessary.**

The ASW testified that on November 18, 2019, she went to Petitioner's home and completed a comprehensive assessment with Petitioner and her daughter provider. During the assessment, the ASW determined that Petitioner did not have a need for hands on assistance with any ADL, functional ranking 3 or greater, but may have a need for assistance with the IADL's of housework, laundry and shopping. The ASW noted that Petitioner was observed walking and transferring independently without the use of any adaptive equipment. The ASW testified that Petitioner does have a single cane, but she did not use it during the assessment, and it was not visible to the ASW. The ASW indicated that Petitioner informed her that she needed assistance getting in and out of the tub to bathe, but the ASW did not find this credible after observing Petitioner move about the home freely during the assessment.

The ASW testified that based on the information available at the time of the assessment, she concluded that Petitioner did not have a medical need, functional

ranking of 3 or higher, with any ADL. The ASW indicated that on December 3, 2019, she sent Petitioner a Negative Action Notice indicating that HHS was denied based on the policy requiring a need for hands on assistance with at least one ADL, functional ranking 3 or greater.

The ASW also testified that on January 30, 2020, the Department sent Petitioner a Second Collection Notice relating to a recoupment action from a prior HHS case Petitioner had opened. The ASW explained that the recoupment action arose because during a home visit on July 1, 2019 during a prior HHS case, Petitioner informed the ASW that her provider had quit on her back on May 1, 2019. The ASW indicated that she placed a stop payment on Petitioner's HHS case until a new provider could be enrolled, but the Department continued to pay Petitioner and her provider for HHS in May 2019 and June 2019. The ASW indicated that the checks were made out to both Petitioner and her provider and both checks were cashed.

Petitioner testified that she did get up during the assessment to get pens for her daughter to use but that was just because her daughter did not know where the pens were and the ASW kept insisting that Petitioner get the pens. Petitioner indicated that she does need assistance with quite a few things, including laundry, housework, and getting out of the house. Petitioner testified that the ASW made her feel humiliated when she came out for the home visit. Petitioner indicated that she told the ASW that she had had issues with her previous caseworker and that she hoped that they would get along better. Petitioner testified that her son and daughter continue to help her out but they both work too.

Regarding the recoupment, Petitioner testified that she never informed the ASW that her provider quit in May 2019, but that the provider did quit after she got out of the hospital on May 19, 2029 following an outpatient surgery.

Based on the evidence presented, Petitioner has failed to prove, by a preponderance of the evidence, that the Department erred in denying her HHS application. The evidence was not sufficient to establish that Petitioner had a need for hands on assistance, functional ranking 3 or greater, with at least one ADL, based on the information available to the ASW for this assessment. The ASW provided credible, detailed testimony regarding her discussion of ADL's with Petitioner and her observations of Petitioner during the assessment. Petitioner was observed ambulating and transferring without assistance and Petitioner informed the ASW that she was independent with all of her ADL's except bathing, which does not seem credible based on the ASW's other observations. Policy also provides that it is the ASW, not the beneficiary's doctor, who assesses and approves the need for HHS. Accordingly, the denial of Petitioner's HHS application was proper and must be upheld.

Furthermore, based on the evidence presented, the recoupment action against Petitioner was proper. While Petitioner denied telling the ASW that her provider quit in May 2019, Petitioner did admit that her provider stopped providing services in May 2019. As such, the recoupment action against Petitioner was proper and must be upheld.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly denied Petitioner's HHS application based on the available information and that the recoupment action against Petitioner was proper. The recoupment amount is \$ [REDACTED].

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.



RM/sb

Robert J. Meade
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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