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GOVERNOR

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

ORLENE HAWKS
DIRECTOR



Date Mailed: August 19, 2020
MOAHR Docket No.: 20-001810
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Steven Kibit

DECISION AND ORDER

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

After due notice, a telephone hearing was begun on July 14, 2020. However, while the hearing went past the scheduled time, it was still not completed that day and the parties and undersigned Administrative Law Judge subsequently determined that the hearing should be continued later. After due notice, the telephone hearing was continued and completed on August 6, 2020.

During the hearing, [REDACTED], one of Petitioner's daughters, appeared and testified on Petitioner's behalf. John Lambert, Appeals Review Officer, represented the Respondent Department of Health and Human Services (DHHS or Department). Tamika Childs, Adult Services Worker (ASW), testified as a witness for the Department.

The Department also submitted an evidence packet that was admitted into the record as Exhibit A, pages 1-59. Petitioner did not submit any exhibits.

ISSUE

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

FINDINGS OF FACT

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

1. Petitioner is a [REDACTED] (92) year-old Medicaid beneficiary who has been diagnosed with, among other conditions, hypertension; chronic lower back pain; gastroesophageal reflux disease; and dementia. (Exhibit A, pages 8, 10; Testimony of Petitioner's representative; Testimony of ASW).

2. Since September of 2011, Petitioner has had an open HHS case with the Department. (Exhibit A, page 8).
3. Prior to the action at issue in this case, Petitioner was approved for \$[REDACTED] per month in HHS for assistance with bathing, dressing, eating, grooming, mobility, toileting, transferring, housework, laundry, taking medications, meal preparation, shopping, and travel for shopping. (Exhibit A, pages 11, 14).
4. On February 14, 2020, the ASW completed a home visit and review with Petitioner and her daughter/care provider. (Exhibit A, page 17).
5. That same day, the ASW sent Petitioner written notice stating that, based on the last review, Petitioner's HHS would be reduced to \$[REDACTED] per month as of March 1, 2020. (Exhibit A, page 7).
6. On February 22, 2020, Petitioner's representative telephoned the ASW and left a message in an attempt to discuss Petitioner's services. (Exhibit A, page 20).
7. However, the ASW did not return the call because the Department's records at the time showed that Petitioner did not have a guardian and that Petitioner's representative was not the care provider. (Exhibit A, page 20).
8. On February 25, 2020, the ASW did discuss Petitioner's services further with Petitioner's daughter/care provider. (Exhibit A, page 20).
9. That same day, the ASW sent Petitioner written notice stating that, per the conversation with the caregiver, assistance and dressing was being added back at a reduced amount and that Petitioner's HHS would be reduced to \$[REDACTED] per month as of March 1, 2020. (Exhibit A, page 6).
10. On March 9, 2020, the Michigan Office Administrative Hearings and Rules (MOAHR) received the request for hearing filed in this matter regarding the reduction in Petitioner's HHS. (Exhibit A, pages 4-7).

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 statutes, 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.

Adult Services Manual (ASM) 101 (4-1-2018) and ASM 120 (2-1-2019) address the issue of what services are included in HHS and how such services are assessed. For example, ASM 101 provides in part:

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.

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 specialist.

Personal care 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) 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.

Example: Ms. Smith is assessed at a level 4 for bathing however she refuses to receive assistance. Ms. Smith would be eligible to receive assistance with IADL's [sic] 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 specialist 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.

* * *

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 101, pages 1-3, 4-5

Moreover, ASM 120 states in part:

Functional Abilities Tab

The **Functional** Tab under **Assessment** module in MiAIMS is the basis for service planning and for 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 3 level 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 [sic] 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, reachers, 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 MDHHS-5535, Complex Care Assessment, from MiAIMS forms for assistance with activity ranking, frequency, and length of time needed.

Time and Task

The specialist will allocate time for each task assessed a rank of 3 or greater, based on interviews with the client and provider, 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.

MiAIMS has a client centered time and task based off the assessment abilities and what the client's needs are. Also a caregiver time and task based off client choice of activities to be performed by their chosen provider. Client time and task may be different from caregiver time and task due to client choice. Client time and task offer the maximum RTS based off the client assessment need. Caregiver time and task can have the same RTS or less.

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 performed and approved.

Example: Miss. Smith has been assessed to need bathing assistance. However she does not want her 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 specialist must assess each task according to the actual time required for its completion.**

Example: A client needs assistance with cutting up food. The specialist 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 adjoining 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.

ASM 120, pages 2-7

Here, as discussed above, the Department reduced Petitioner's HHS overall by decreasing assistance with dressing, grooming, transferring and mobility, and removing assistance with eating and toileting.

In support of that decision, the ASW testified and detailed in her notes that Petitioner's HHS were reduced based upon the reports of Petitioner and Petitioner's daughter/care provider; her own observations; and the applicable policies. She also both testified and described in her notes what assistance, if any, was reported for each specific task. She further testified that Petitioner answered most of the questions during the assessment and that, while Petitioner has been diagnosed with dementia, she answered all questions appropriately. According to the ASW's testimony and notes, Petitioner's daughter/care provider also answered questions during the assessment and had full opportunity to correct any misstatements made by the Petitioner. The ASW also testified that she subsequently spoke with the care provider again after the visit and, based on that conversation, she added some assistance back on, though Petitioner's HHS were still reduced overall. The ASW did not discuss the case with Petitioner's representative

because the Department's records at the time indicated that Petitioner did not have a guardian and that the representative was not the care provider.

In response, Petitioner's representative testified that Petitioner has four caregivers providing Petitioner with around-the-clock care in order to keep her out of nursing home, with Petitioner's representative enrolled as the HHS providers and her four sisters actually providing the care. Petitioner's representative also generally testified that Petitioner will not share the truth or accurately report what assistance she receives. Petitioner's representative further testified that they help Petitioner with everything and, in response to questions from the undersigned Administrative Law Judge, described assistance provided with specific tasks. According to Petitioner's representative, the daughter/care provider at the assessment reported to Petitioner's representative that the ASW did not speak with the provider during the assessment.

Petitioner bears the burden of proving by a preponderance of the evidence that the Department erred in reducing her HHS. Moreover, the undersigned Administrative Law Judge is limited to reviewing the Department's decision in light of the information that was available at the time the decision was made.

Given the record and applicable policies in this case, Petitioner has failed to meet her burden of proof and the Department's decision must therefore be affirmed.

Petitioner's representative and the ASW described very different needs for Petitioner and this case therefore turns on the credibility of the ASW, as the undersigned Administrative Law Judge is limited to reviewing the Department's decision in light of the information that was available at the time the decision was made and the ASW was the only witness who was present when information was provided to the Department.

Here, the undersigned Administrative Law Judge ultimately finds the ASW to be credible. The ASW's testimony was consistent with her notes, taken at the time of the conversations at issue, as well as the information provided in the Medical Needs form, which did not identify Petitioner as having the same needs claimed by Petitioner's representative

Moreover, while Petitioner's representative testified that Petitioner will not accurately report her own needs and that Petitioner's daughter/care provider told her both that the care provider did not have a chance to correct Petitioner during the home visit and that the care provider reported different needs during the subsequent telephone conversation, the care provider did not testify at the hearing and Petitioner's representative's testimony is unsupported hearsay.

Accordingly, given the credible testimony of the ASW as to what was reported to her and the need to reduce Petitioner's HHS given those reports, Petitioner has failed to meet her burden of proving that the Department erred and the decision to reduce her services must be affirmed.

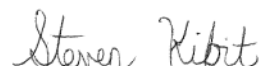
DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly reduced Petitioner's HHS.

IT IS, THEREFORE, ORDERED that:

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

SK/sb



Steven Kibit

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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