



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: June 9, 2020
MOAHR Docket No.: 20-002237
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Corey Arendt

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; 42 CFR 431.200 to 431.250; and 42 CFR 438.400 to 438.424, upon the Petitioner's request for a hearing.

After due notice, a hearing was held on June 2, 2020. [REDACTED] Authorized Hearing Representative and Child and Family Services Foster Care worker, appeared on behalf of the Petitioner. [REDACTED] Child and Family Services Specialist for Community Mental Health, appeared as a witness for the Petitioner. Florence Scott-Emuakpor, Appeals Review Officer, appeared on behalf of the Department of Health and Human Services (Department). Heather Dorman, Adult Services Worker (ASW), appeared as a witness for the Department.

Exhibits:

| | |
|------------|---------------------|
| Petitioner | None |
| Department | A – Hearing Summary |

ISSUE

Did the Department properly deny Petitioner's request for Home Help Services (HHS) benefits?

FINDINGS OF FACT

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

1. Petitioner is a Medicaid beneficiary, born [REDACTED]. (Exhibit A, p 7; Testimony.)
2. On December 13, 2019, Petitioner requested HHS benefits. (Exhibit A, p 7; Testimony.)

3. Petitioner is a foster child who resides with foster parents. The foster parents receive the foster care maintenance rate and a Determination of Care (DOC) supplement for fostering Petitioner. (Exhibit A, pp 18-21; Testimony.)
4. DOC supplements are justified when extraordinary care or expense is required of the foster parents or relative (foster care provider) who is eligible for a foster care payment. (FOM 903-03; Testimony.)
5. On January 13, 2020, a home visit was completed. At the time of the assessment it was determined Petitioner was an active ward and under the care and custody of the Department and placed with foster parents who are receiving payment for Petitioner's care. (Exhibit A, p 12; Testimony.)
6. As of November 22, 2019, and continuing through May 21, 2020, Petitioner had a DOC assessment that highlighted the additional areas of need requiring foster parent attention. (Exhibit A, pp 18-21; Testimony.)
7. Between January 13, 2020 and January 23, 2020, the Department reviewed Petitioner's case and the services already being provided to Petitioner. It was determined Petitioner's DOC assessment in place already compensated Petitioner for the same services that HHS would/could provide and that if HHS would be approved, there would be a duplication of services. (Exhibit A, p 16; Testimony.)
8. On January 23, 2020, the Department sent Petitioner a negative action notice. The notice indicated Petitioner's HHS request was being denied as it was determined that HHS would be a duplication of services given Petitioner's caregivers are currently receiving foster care payment with a difficult of care rate that is consistent with justifications used for HHS services. (Exhibit A, p 16; Testimony.)
9. On March 31, 2020, Petitioner's Request for Hearing was received by the Michigan Office of Administrative Hearings and Rules. (Exhibit A, p 6.)

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 the 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. ¹

The Children's Foster Care Manual address foster care payments and DOC supplements. FOM 903-03 states the following:

DETERMINATION OF CARE (DOC) SUPPLEMENTS FOR FOSTER CARE

A determination of care (DOC) supplement may be justified when extraordinary care or expense is required of the foster parents or relative (foster care provider) who is eligible for a foster care payment. The appropriate DOC form is to be completed in MiSACWIS for every child in a paid foster home or relative placement. DOC forms are to be completed with the active involvement of the foster parent/relative provider. The completion of the form is required and not contingent on a request being received from the provider. **If the foster parent/relative is completing the additional tasks identified to meet the child's needs, they are eligible for the DOC rate.** Timely completion of the DOC forms and ensuring that the foster parent/relative providers are paid the appropriate rate is an important task of the foster care worker.

* * *

The DOC supplement must not include activities provided by a third party (person) for child care, nursing care, respite care, assisted care, etc. The child day care program is to be sued for child day care needs and the medical assistance program for nursing care, etc.

Note: children receiving the additional rate for the SED Waiver or treatment foster care are not also eligible for a DOC.²

¹ Adult Services Manual 101, April 1, 2018, pp 1-2, 5.

The ASW testified that an approval of HHS would result in a duplication of services as the foster parents were already receiving compensation for performing the same services that HHS would be covering.

The Petitioner argued that although HHS may encompass the same services covered by the DOC supplement, the DOC supplement is not meant to cover all of the care required. The Petitioner however could not identify specific tasks outside of those outlined in the DOC assessment nor could the Petitioner identify specific policy that would support their position.

Having reviewed the little policy that could be found, it appears that the foster parents are required to perform all of the tasks outlined in the DOC assessment in order to receive the DOC supplement. That being the case, if HHS were to be approved, the family would receive duplicate funds for providing the same services. A duplication of services. Additionally, according to the policy found in ASM 101, HHS cannot be approved where and when services are being provided by another source (Foster Care payments).

Based on the evidence presented, Petitioner has failed to prove, by a preponderance of evidence, that the denial of HHS was inappropriate. Accordingly, the denial of Petitioner's HHS is upheld.

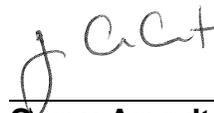
DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that, based on the available information, the Department properly denied Petitioner's HHS request.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

CA/sb



Corey Arendt
Administrative Law Judge
for Robert Gordon, Director
Department of Health and Human Services

² Children's Foster Care Manual, Payment for Foster Family/Relative Care, FOB 2019-016, November 1, 2019, pp 2-5.

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30763
Lansing, Michigan 48909-8139

DHHS -Dept Contact

Michelle Martin
Capitol Commons
6th Floor
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