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GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: August 3, 2020
MOAHR Docket No.: 20-002252
Agency No.: ██████████
Petitioner: ██████████

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 June 10, 2020. ██████████, Sister and Authorized Hearing Representative (AHR), represented the Petitioner. John Lambert, Appeals Review Officer (ARO), represented the Department of Health and Human Services (Department). Pearl Cowart, Adult Services Worker (ASW), and Redonda 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. 1-49; a DHS-54A Medical Needs form was admitted as Exhibit B, p. 1.

ISSUE

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

FINDINGS OF FACT

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

1. On November 12, 2019, the Department received a referral for HHS for Petitioner. (Exhibit A, p. 8)
2. Petitioner's doctor completed a DHS-54A Medical Needs form on September 25, 2019. The listed diagnoses appear to be renal transplant, hip osteoarthritis, and recurrent urinary tract infection. In field I, the doctor certified that Petitioner had a medical need for assistance with listed personal care activities. The activities of

bathing, mobility, meal preparation, shopping, laundry, and housework were marked. (Exhibit B, p. 1)

3. On November 25, 2019, the ASW went to Petitioner's home and completed an initial assessment with Petitioner and sister, the proposed caregiver. In part, the ASW went over the Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADLs) included in the HHS program. (Exhibit A, p. 14; ASW Testimony)
4. On January 10, 2020, the Department sent Petitioner an Advance Negative Action Notice informing her that HHS was denied based on the assessment not identifying a need for hands on assistance with an ADL. (Exhibit A, pp. 4 and 15)
5. On April 2, 2020, Petitioner's Request for Hearing was received by the Michigan Office of Administrative Hearings and Rules (MOAHR). (Exhibit A, pp. 4-7)

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.

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

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 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.

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

Petitioner's doctor completed a DHS-54A Medical Needs form on September 25, 2019. The listed diagnoses appear to be renal transplant, hip osteoarthritis, and recurrent urinary tract infection. In field I, the doctor certified that Petitioner had a medical need for assistance with listed personal care activities. The activities of bathing, mobility, meal preparation, shopping, laundry, and housework were marked. (Exhibit B, p. 1)

On November 25, 2019, the ASW went to Petitioner's home and completed an initial assessment with Petitioner and sister, the proposed caregiver. In part, the ASW went over the ADLs and IADLs included in the HHS program. The ASW observed adaptive equipment, such as a cane and walker in the home. The ASW understood that Petitioner completes ADLs without assistance. (Exhibit A, p. 14; ASW Testimony) Accordingly, on January 10, 2020, the Department sent Petitioner an Advance Negative Action Notice informing her that HHS was denied based on the assessment not identifying a need for hands on assistance with an ADL. (Exhibit A, pp. 4 and 15)

However, it does not appear that the ASW considered whether Petitioner would need assistance from others to walk without using her cane or walker during the assessment. The ASW stated Petitioner was sitting in a chair during the home visit interview. Accordingly, the ASW did not observe Petitioner walking. When asked whether she believed someone would have to assist Petitioner with walking if Petitioner did not have her cane/walker, the ASW stated she assumed they would. (ASW Testimony) Under the above ASM policies, 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 HHS. The ASW should have considered whether Petitioner would require hands-on assistance with mobility if she did not have her cane/walker when the comprehensive assessment was completed because this could affect Petitioner's eligibility for HHS.

Petitioner's sister testified that Petitioner has additional adaptive equipment she utilizes to complete ADLs. Petitioner has lift chairs that help with getting up/sitting down. Petitioner is not able to push herself up. Petitioner also has an adjustable bed, which helps with getting in/out of bed. Regarding bathing, Petitioner has a walk-in shower as well as a shower chair and multiple grab bars. Regarding mobility, Petitioner uses the cane in small areas, otherwise she uses the walker. Petitioner lives in a bungalow house that has three levels. Petitioner cannot do stairs at all. Applications have been made to get Petitioner into a handicap apartment, but there are long waiting lists.

Petitioner also has a gripper she uses for dressing, but cannot put on shoes, socks, or boots. During the assessment, Petitioner let the ASW know it was a bad day for her with pain. When Petitioner's sister tried to assist with answering the ASW's questions, the ASW said that the questions were for Petitioner not her. Petitioner's sister offered to show the ASW the bathroom and bedroom, and to have Petitioner walk, but the ASW declined. (Sister Testimony)

The ASW acknowledged that Petitioner reported she had pain, but also indicated she was able to speak for herself. The ASW denied telling Petitioner's sister she could not talk and indicated that both Petitioner and her sister spoke during the assessment. The ASW acknowledged that she did not look at the bathroom and explained that this was because Petitioner had already stated she could bathe herself and had not reported any adaptive equipment for bathing. The ASW indicated they did not offer to have Petitioner walk during the assessment. The ASW noted that Petitioner lives alone. (ASW Testimony)

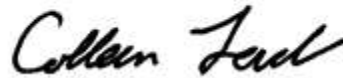
Overall, the available information indicates that Petitioner may have had a need for assistance at functional ranking level 3 or greater with at least one ADL or a complex care activity at the time of the assessment. The ASW's testimony indicates that based on the available information, she believed that someone would have to assist Petitioner with walking if Petitioner did not have her cane/walker. Accordingly, it appears that an error was made when assessing mobility during the comprehensive assessment. Further, it appears that there were some misunderstandings/miscommunications during the ASW's home visit. The testimony of Petitioner's sister indicates Petitioner utilizes other types of adaptive equipment to complete many other ADLs and may also need hands-on assistance with dressing, such as putting on shoes/socks. A re-assessment is needed to determine Petitioner's eligibility for the HHS program.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department improperly denied Petitioner's November 12, 2019, Home Help Services (HHS) referral based on the information available at the time of the determination.

IT IS, THEREFORE, ORDERED that:

The Department's decision is **REVERSED**. If they have not already done so, the Department should initiate completing a new assessment of Petitioner for the HHS program.



CL/dh

Colleen Lack
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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