

GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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

Date Mailed: August 12, 2020
MOAHR Docket No.: 20-004548
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 telephone hearing was held on August 12, 2020. [REDACTED], Petitioner's mother and guardian, appeared and testified on Petitioner's behalf. Florence Scott-Emuakpor, Appeals Review Officer, represented Respondent, Michigan Department of Health and Human Services (Department). Katrina Jackson-Butler, Adult Services Worker (ASW) and Leslie Sims, Adult Services Supervisor, appeared as witnesses for the Department.

ISSUE

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

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 was referred for HHS on or about March 9, 2020. (Exhibit A, p 11; Testimony)
2. On April 28, 2020, the ASW contacted Petitioner's mother and guardian to discuss Petitioner's HHS application. During this conversation, and follow-up conversations with other parties, the ASW learned that Petitioner was receiving 40 hours per week (160 hours per month)¹ of CLS provided by United Horizons Services through Petitioner's case with her local

¹ The CMH later increased this amount of CLS to 50 hours per week or 200 hours per month.

Community Mental Health agency. The ASW further learned that these CLS hours were being used for direct hands-on care for Petitioner in the home while her mother was at work. The ASW was informed that CLS was being used for hands on care because Petitioner could not participate in an adult workshop or other community activities due to the COVID-19 pandemic. Petitioner's Supports Coordinator at CMH, Ann McGibbons, also informed the ASW that respite services were authorized for Petitioner's mother but were not currently being utilized. (Exhibit A, pp 12, 14; Testimony)

3. On April 30, 2020, the ASW sent Petitioner a Negative Action Notice informing Petitioner that her HHS application was denied because Petitioner was receiving direct, hands-on care through the local CMH agency. (Exhibit A, p 13; Testimony)
4. On July 20, 2020, Petitioner's hearing request was received by the Michigan Office of Administrative Hearings and Rules. (Exhibit A, pp 6-8)

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.

Adult Services Manual (ASM) 101 addresses Available Services:

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
April 1, 2018, p 5 of 5
Emphasis added

ASM 125 addresses Coordination with Other Services:

COMMUNITY MENTAL HEALTH (CMH)

Many clients are eligible to receive both, Home Help services and mental health services through the local Community Mental Health Services Programs (CMHSPs) or Prepaid Inpatient Health Plans (PIHPs). ASWs should contact their local CMH for procedures on how to obtain protected client information for mutual clients.

Clients who live in unlicensed settings where Home Help services may be provided include:

- Own home/apartment, either living alone or with roommates or relatives. Client's name is on the lease or mortgage.
- Home of a family member.
- Supported independent setting (formerly called SIP homes). The lease is held by an individual that is **not** also the individual caregiver or agency provider/caregiver of other services such as Home Help.

Note: The instrumental activities of daily living (IADLs) in shared living arrangements must be divided by **one half** unless justified.

Community Living Supports (CLS)

Clients eligible for Home Help services authorized by the adult services worker may also receive Community Living Supports (CLS) authorized through the local Community Mental Health Services Programs (CMHSPs) or Prepaid Inpatient Health Plans (PIHPs). Community Living Supports services cannot duplicate or replace Home Help services. Clients who are seeking personal care services and are eligible to receive both programs, must first apply for Home Help services as Home Help is the first payer.

The client's plan should clearly identify where Home Help and Community Living Supports are **complementary**. The ASW determines the need for services based on the MDHHS-5534, Adult Services Comprehensive Assessment. If the client is receiving the maximum authorized through Home Help and still needs additional hands on assistance with some ADLs and/or IADLs in order to remain at home, Community Living Supports services may be used to provide that additional direct physical assistance which exceeds the cost of care determined by the Michigan Department of Health and Human Services (MDHHS) comprehensive assessment.

Unlike Home Help, which only provides direct hands on assistance with ADLs and IADLs, Community Living Supports services typically are used for skill development or supervision. In such situations, the use of both Home Help and Community Living Supports is permitted as the services are **different and not a duplication**.

The Community Living Supports services may not supersede or replace Home Help services. The client must exhaust all available services under Home Help before seeking Community Living Supports.

ASM 125
November 1, 2019, pp 1-2
Emphasis added

The ASW testified that on April 28, 2020, she contacted Petitioner's mother and guardian to discuss Petitioner's HHS application. The ASW indicated that during this conversation, and follow-up conversations with other parties, she learned that Petitioner was receiving 40 hours per week (160 hours per month), which was later increased to 200 hours per month, of CLS provided by United Horizons Services through Petitioner's case with her local Community Mental Health (CMH) agency. The ASW testified that she further learned that these CLS hours were being used for direct hands-on care for Petitioner in the home while her mother was at work and that CLS was being used for hands on care because Petitioner could not participate in an adult workshop or other community activities due to the COVID-19 pandemic. Petitioner's Supports Coordinator

at CMH, Ann McGibbons, also informed the ASW that respite services were authorized for Petitioner's mother.

Based on this information, the ASW testified that on April 30, 2020, she sent Petitioner a Negative Action Notice informing Petitioner that her HHS application was denied because Petitioner was receiving direct, hands-on care through the local CMH agency.

Petitioner's mother testified that she got her daughter out of an AFC home last year after Petitioner had spent the past 13-14 years in the home. Petitioner's mother indicated that Petitioner was receiving CLS while in the AFC home, but was told that she would have to apply for HHS when Petitioner left the AFC home. Petitioner's mother testified that she did so and had everything lined up when the COVID-19 pandemic hit. Petitioner's mother testified that even with the 50 hours of CLS Petitioner is receiving now, she still needs additional help, including respite so that she can take a break. Petitioner's mother indicated that after work she has to go right in to caring for Petitioner and also has to care for Petitioner every weekend. Petitioner's mother indicated that she just wanted to get some additional hours through HHS to make things more manageable.

According to the above policy, the ASW had to deny Petitioner's HHS application once she discovered that Petitioner was receiving hands-on services through the local CMH office as policy does not allow a duplication of services. Furthermore, given the high number of CLS hours Petitioner is currently receiving through the CMH agency, additional in-home care is not necessary. Respite may be necessary for Petitioner's mother to get a break in caring for Petitioner in the evenings and on the weekends, but respite services are not available through HHS. It was, however, indicated during the hearing that respite hours are currently authorized through the CMH so Petitioner's mother should contact her CMH supports coordinator, Ann McGibbons, if she would like to utilize those hours. Also, as indicated during the hearing, this situation is temporary during the COVID-19 pandemic and Petitioner's mother will likely have to apply for HHS for in-home, hands-on care for Petitioner when the pandemic is over because Petitioner's CLS will then be used for activities outside of the home. However, at this time, the denial of Petitioner's HHS was proper.

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.

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

Michelle Martin
Capitol Commons
6th Floor
Lansing, MI
48909

DHHS-Location Contact

Sherry Reid
Oakman Adult Services
3040 W. Grand Blvd., Suite L450
Detroit, MI
48202

DHHS Department Rep.

M. Carrier
Appeals Section
PO Box 30807
Lansing, MI
48933

Agency Representative

Florence Scott-Emuakpor
222 N. Washington Square
Suite 100
Lansing, MI , MI
48933

Authorized Hearing Rep.

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

Petitioner

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