



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED] MI [REDACTED]

Date Mailed: September 8, 2020
MOAHR Docket No.: 20-005132
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 September 3, 2020. [REDACTED] Petitioner, appeared on her own behalf. Emily Piggott, Appeals Review Officer, appeared on behalf of the Respondent, Michigan Department of Health and Human Services (Department). Tracy Burroughs, Adult Services Worker, appeared as a witness for the Department.

Exhibits:

Petitioner	None
Department	A – Hearing Summary

ISSUE

Did the Department properly determine Petitioner's Home Help Services (HHS) benefit amount?

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 [REDACTED] Petitioner, a Medicaid recipient, requested HHS benefits. (Exhibit A, pp 7, 9; Testimony.)
2. On June 15, 2020, Department received a completed 54-A. The 54-A indicated Petitioner as being diagnosed with right knee and thigh edema. (Exhibit A, p 10; Testimony.)

3. Due to Covid-19, face-to-face contacts were replaced with telephone interviews. (Exhibit A, p 11; Testimony.)
4. On July 15, 2020, Petitioner and Petitioner's prospective Provider participated in a telephone interview. Petitioner's prospective Provider interpreted the interview. During the interview, Petitioner reported she lives alone, experiences problems with her knees, is unable to walk without a walker, unable to stand for more than five minutes, experiences dizziness and nausea due to her medication, requires assistance with entering/exiting the bath, requires assistance dressing her lower body, sometimes requires assistance with wiping and cleaning herself, requires assistance getting on and off the toilet¹, is able to shampoo her own hair, is able to dress her upper body, is able to complete her oral care and daily care, and is able to manage eating utensils and feed herself. It was indicated Petitioner's neighbor sometimes stays overnight to assist Petitioner. During the interview, the Department indicated the agency would not pay for overnight care for someone to stay and monitor/supervise. (Exhibit A, p 11; Testimony.)
5. On July 20, 2020, Petitioner was contacted by facetime to gather additional information. During the facetime, Petitioner was observed transferring on a sofa. (Exhibit A, p 12.)
6. Following the assessment, Petitioner was assigned a ranking of 3 for the tasks of bathing, dressing, toileting, housework, laundry, medication, meal preparation, shopping for food/meds and travel for shopping and allocated the following time:
 - Bathing 7 days a week 10 minutes a day
 - Dressing 7 days a week 10 minutes a day
 - Toileting 7 days a week 5 minutes a day
 - Housework 7 days a week 12 minutes a day
 - Laundry 2 days per week 20 minutes a day
 - Medication 7 days a week 2 minutes a day
 - Meal Preparation 7 days a week 30 minutes a day
 - Shopping for Food/Medication 2 days a week 30 minutes a day
 - Travel for Shopping 2 days a week 10 minutes a day(Exhibit A, pp 13-14; Testimony.)
7. On July 23, 2020, Department sent Petitioner a services approval notice. The notice indicated Petitioner was approved for HHS in the monthly amount of \$427.83. (Exhibit A, p 16; Testimony.)
8. On August 11, 2020, the Michigan Office of Administrative Hearings and

¹ Exhibit A, p 11 reflects Petitioner wears adult diapers.

Rules, received from Petitioner, a request for hearing. (Exhibit A, p 4.)

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.²

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.

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

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.³

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

³ ASM 105, January 1, 2018, pp 1, 3.

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.⁴

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.

⁴ ASM 115, January 1, 2018, p 3.

- 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.⁵

Adult Services Manual (ASM) 120, 2-1-2019, addresses responsible relatives:

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.⁶

The Adult Services Glossary defines a responsible relative as a person's spouse or a parent of an unmarried child under age 18.⁷

⁵ ASM 120, February 1, 2019, pp 1-3.

⁶ ASM 120, February 2, 2019, p 7.

⁷ Adult Services Glossary (ASG Glossary), May 1, 20138, p 7.

In this case, it was indicated Petitioner was requesting a hearing because Petitioner disagreed with the Department's initial HHS allocation. The Department based their initial assessment on the initial telephone interview and follow-up facetime conversation.

After a complete review of the record, I conclude the Department has established by the necessary competent, material and substantial evidence on the record that it was acting in accordance with Department policy when it determined Petitioner's initial HHS allotment. Petitioner has failed to satisfy the burden of proving by a preponderance of the evidence that the Department improperly determined her HHS benefits. While the Petitioner's Representative testified to the level of care provided to Petitioner, the testimony did not specifically rebut the evidence presented by the Department. It is clear the Petitioner is eligible for Home Help Services and the dispute is only as to the level of care needed/required. In this case, Petitioner failed to present any evidence that there is an additional need above and beyond what is already being approved.

DECISION AND ORDER

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

IT IS, THEREFORE, ORDERED that:

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

CA/dh

J. Arendt

Corey Arendt
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

Emily Piggott
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Lansing, MI 48909

Petitioner

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