



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR



Date Mailed: December 10, 2020
MOAHR Docket No.: 20-006808
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 December 10, 2020. [REDACTED], Petitioner's mother, provider, and guardian, appeared and testified on Petitioner's behalf. Leigha Burghdoff, Appeals Review Officer, represented the Respondent, Michigan Department of Health and Human Services (MDHHS or Department). Sharon Clark, Adult Services Worker (ASW), appeared as a witness for the Department.

ISSUE

Did the Department properly authorize 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] year-old Medicaid beneficiary, born [REDACTED] who is diagnosed with seizure disorder and severe cognitive impairment. Petitioner lives in a shared household with his mother, who is also his HHS provider and guardian. (Exhibit A, pp 10-12; Testimony)
2. On May 29, 2020, the Department's ASW conducted a telephone reassessment with Petitioner and his provider. The reassessment was conducted via telephone due to the COVID-19 pandemic. The ASW reviewed Petitioner's Activities of Daily Living (ADL's) and Instrumental Activities of Daily Living (IADL's). The ASW learned from Petitioner's mother/provider that Petitioner can bring in the groceries and wash himself, but that she sometimes needs to go over the client after bathing and redirect Petitioner with dressing as he sometimes puts his clothes on

backwards. The ASW also learned that Petitioner's mother/provider ties his shoes and helps him get in and out of the tub. The ASW also learned that Petitioner resides with his mother/provider but that the prior worker had not prorated Petitioner's IADL's for a shared household. (Exhibit A, pp 15-16; Testimony)

3. Following the assessment, Petitioner's monthly HHS payment was reduced from [REDACTED] per month to [REDACTED] per month. The ASW based her determination on the answers to her questions given by Petitioner's mother/provider. The ASW also prorated Petitioner's IADL's per policy because Petitioner lives in a shared household. (Exhibit A, pp 14-15; Testimony)
4. On May 29, 2020, the Department sent Petitioner a Negative Action Notice informing him of the reduction in HHS. (Exhibit A, p 16; Testimony)
5. On August 10, 2020, Petitioner's HHS was changed back to the preassessment amount pursuant to COVID-19 policy found in MSA Bulletin 20-19, which indicates that Medicaid cases cannot be closed, and services cannot be reduced during a public health emergency. (Exhibit A, pp 17-23; Testimony)
6. On November 4, 2020, Petitioner's Request for Hearing was received by the Michigan Office of Administrative Hearings and Rules. (Exhibit A, pp 5-8)
7. On November 17, 2020, the Department's ASW conducted another telephone reassessment with Petitioner and his mother/provider. There were no changes from the May 2020 assessment. Petitioner's mother/provider was informed that while her son's HHS payment would remain the same during the COVID-19 pandemic, the reduction from May 2020 would be applied once the public health emergency was over. (Exhibit A, p 19; Testimony)

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.

*Adult Services Manual 101
April 1, 2018, pp 1-2, 5
Emphasis added*

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.

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.

*Adult Services Manual 105
January 1, 2018, pp 1, 3
Emphasis added*

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 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.

*Adult Services Manual 115
January 1, 2018, p 3*

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.
- 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 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.

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.

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 adjoined 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.

*Adult Services Manual 120
February 1, 2019, pp 1-8
Emphasis added*

The ASW testified that on May 29, 2020, she conducted a telephone reassessment with Petitioner and his mother/provider due to the COVID-19 pandemic. The ASW indicated that she reviewed Petitioner's ADL's and IADL's and learned that Petitioner can bring in the groceries and wash himself, but that his provider sometimes needs to go over the client after bathing and redirect Petitioner with dressing as he sometimes puts his clothes on backwards. The ASW also learned that Petitioner's mother/provider ties his shoes and helps him get in and out of the tub. The ASW testified that she further learned that Petitioner resides with his mother/provider but that the prior worker had not prorated Petitioner's IADL's for a shared household.

The ASW testified that following the reassessment, Petitioner's monthly HHS payment was reduced from [REDACTED] per month to [REDACTED] per month. The ASW based her determination on the answers to her questions given by Petitioner's mother/provider and the proration of Petitioner's IADL's per policy because Petitioner lives in a shared household. The ASW indicated that on May 29, 2020, she sent Petitioner a Negative Action Notice informing him of the reduction in HHS. The ASW testified that on August 10, 2020, Petitioner's HHS was changed back to the preassessment amount pursuant

to COVID-19 policy found in MSA Bulletin 20-19, which indicates that Medicaid cases cannot be closed and services cannot be reduced during a public health emergency. Finally, the ASW testified that on November 17, 2020, she conducted another telephone reassessment with Petitioner and his mother/provider and that there were no changes from the May 2020 assessment. The ASW did indicate that Petitioner's mother/provider was informed that while her son's HHS payment would remain the same during the COVID-19 pandemic, the reduction from May 2020 would be applied once the public health emergency was over.

Petitioner's mother/provider testified that she started taking care of her adult, disabled son in May 2007 when she retired, and he has been receiving HHS since that time. Petitioner's mother/provider indicated that no other worker over the past 13 years has mentioned the need to prorate the HHS for a shared household. Petitioner's mother/provider indicated that the ASW made it sound like she could not care of her own son. Petitioner's mother/provider testified that she knows what her son needs, and the worker should not be able to take hours away from him as she is not in their household and does not know what he needs.

Based on the evidence presented, Petitioner has failed to prove by a preponderance of the evidence that the Department erred in authorizing his HHS. The ASW testified in a credible manner about the answers to her questions during the reassessment. Petitioner's mother/provider did not really challenge any of the ASW's specific findings regarding approved time and task, but mostly took issue with the proration of IADL's due to it being a shared household. However, it is undisputed that Petitioner lives in a shared household, so it was proper for the ASW to prorate HHS for IADL's by one-half, as required by policy. And while prior workers may not have properly enforced the shared household policy, that does not mean that the current ASW can ignore that policy. As such, the Department's ASW properly calculated Petitioner's HHS based on policy. However, as indicated, Petitioner's HHS will not be reduced during the COVID-19 pandemic pursuant to policy found in MSA Bulletin 20-19, which indicates that Medicaid cases cannot be closed and services cannot be reduced during a public health emergency.

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 authorized Petitioner's HHS.

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
MDHHS-HOME-HELP-POLICY@michigan.gov

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
MHHS-Appeals@michigan.gov

Petitioner

[REDACTED]
MI

Authorized Hearing Rep.

[REDACTED]
MI

Agency Representative

Leigha Burghdoff
P.O. Box 30807
Lansing, MI 48909
MHHS-Appeals@michigan.gov