[redacted]
[redacted]
[redacted], MI [redacted]

Date Mailed: June 7, 2021
MOAHR Docket No.: 21-001471
Agency No.: [redacted]
Petitioner: [redacted]

ADMINISTRATIVE LAW JUDGE: Steven Kibit

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and upon the Petitioner's request for a hearing.

After due notice, a telephone hearing was held on May 19, 2021. [redacted], Petitioner's daughter, appeared and testified on Petitioner's behalf. Attorney Karen Mucha represented Aetna Better Health of Michigan, the Respondent Integrated Care Organization (ICO). Barbara Duffy, Senior Director of Care Management; Karol Ritter, Registered Nurse (RN); Dr. John Moore, Medical Director; and Michelle Culpepper, Manager of Clinical Service; testified as witnesses for Respondent.

During the hearing, the following exhibits were submitted by Respondent and admitted into the record without objection:

Exhibit #1: Aetna Denial Determination Letters

Exhibit #2: HCBS Needs Assessment Standardized Tool dated February 4, 2021

Exhibit #3: MI Health Link Minimum Operating Standards Guideline (MOS), pages 11-30 and pages 58-85;

Exhibit #4: Petitioner's Request for State Fair Hearing and Appeal Records;

Exhibit #5: Petitioner's Chronology of Events (prepared by Aetna Care Management Team)

Exhibit #6: Medicaid Provider Manual, Medicaid Health Plan Chapter, pg. 1; and

Exhibit #7: Section 8 of the Michigan Department of Health and Human Services Medicaid Provider Manual.

ISSUE

Did Respondent properly decide to reduce Petitioner's Personal Care Services?

FINDINGS OF FACT

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

1. Respondent is an Integrated Care Organization (ICO) contracted by the Michigan Department of Health and Human Services (Department or MDHHS) and the Centers for Medicare & Medicare Services (CMS) to provide covered services through the MI Health Link managed care program.

2. In September of 2015, Petitioner enrolled in the MI Health Link program and was authorized for services through Respondent. (Exhibit #5, page 1).

3. As part of her services, Petitioner was approved for 40 hours per week of Personal Care Services. (Exhibit #5, page 1).

4. In September of 2020, Petitioner was disenrolled from the MI Health Link program. (Exhibit #5, page 2).

5. In January of 2021, Petitioner reenrolled with the MI Health Link program and Respondent, and she was again authorized for 40 hours per week of Personal Care Services. (Exhibit #5, page 2).

6. In February of 2021, Respondent completed a review of Petitioner's service utilizing a "Michigan HCBS Needs Tool / Personal Care Assessment". (Exhibit #2, pages 1-20).

7. For both Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADLs), that assessment tool identified maximum times that personal care services could be approved for tasks. (Exhibit #2, pages 1-20).

8. On February 21, 2021, Respondent sent Petitioner written notice that, effective April 1, 2021, her Personal Care Services would be reduced to 30 hours per week. (Exhibit #1, pages 1-6).

9. With respect to the reason for that decision, the notice stated:

> You were previously approved by [Respondent] for Personal Care Service

> totaling 40 hours per week. We will not continue to approve this request for 40 hours.
>
> Records show that you require 30 hours of personal care per week, based on our assessment of your needs and this amount is approved. Your assessment does not support 40 hours per week to manage your activities of daily living. This includes things such as bathing, walking, shopping, and preparation of your meals. Your services will be reduced to 30 hours per week beginning on April 1, 2021.

Exhibit #1, page 1

10. On March 5, 2021, Petitioner filed an Internal Appeal with Respondent regarding that decision. (Exhibit #4, page 6).

11. On March 17, 2021, Respondent sent Petitioner a Notice of Appeal Decision in which it stated that Petitioner's appeal was denied. (Exhibit #4, page 6).

12. With respect to the reason for the denial, the notice stated:

> We denied your appeal for the service/item listed above because: your appeal was reviewed by our Medical Director who is board certified in Internal Medicine and is a licensed Medical Doctor. We reviewed the records that were received for your requested personal care services and have determined that you do not meet the Michigan minimum operating standards that determines the amount, scope and duration of service provision based on the clinical care assessment. Your assessment completed on 02/04/2021 does not show that you need 40 hours. Records show that you require 30 hours of personal care per week, based on our assessment of your needs. We will approve the 30 hours per week starting April 1st, 10 hours will be denied. Therefore, the requested 40 hours of personal care services remain denied. A copy of the criteria that was used to make this decision is available to you free of charge upon request.

Exhibit #4, pages 6-7

13. On March 26, 2021, the Michigan Office Administrative Hearings and Rules (MOAHR) received the request for hearing filed in this matter. (Exhibit #4, pages 1-17).

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 Social Welfare Act, the Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

As discussed above, Petitioner has been authorized for Personal Care Services through Respondent pursuant to the MI Health Link program. With respect to that program, the applicable version of the Medicaid Provider Manual (MPM) states in part:

> **SECTION 1 – GENERAL INFORMATION**
>
> Effective March 1, 2015, the Michigan Department of Health and Human Services (MDHHS), in partnership with the Centers for Medicare & Medicaid Services (CMS), implemented a new managed care program called MI Health Link. This program integrates into a single coordinated delivery system all physical health care, pharmacy, long term supports and services, and behavioral health care for individuals who are dually eligible for full Medicare and full Medicaid. The goals of the program are to improve coordination of supports and services offered through Medicare and Medicaid, enhance quality of life, improve quality of care, and align financial incentives.
>
> MDHHS and CMS have signed a three-way contract with managed care entities called Integrated Care Organizations (ICOs) to provide Medicare and Medicaid covered acute and primary health care, pharmacy, dental, and long term supports and services (nursing facility and home and community-based services). The MI Health Link program also includes a home and community-based services (HCBS) waiver for MI Health Link enrollees who meet nursing facility level of care, choose to live in the community rather than an institution, and have a need for at least one of the waiver services as described in this chapter. This waiver is called the MI Health Link HCBS Waiver.
>
> The Michigan Prepaid Inpatient Health Plans (PIHPs) in the four demonstration regions are responsible for providing all

Medicare and Medicaid behavioral health services for individuals who have mental illness, intellectual/developmental disabilities, and/or substance use disorders. The Eligibility and Service Areas section provides a list of the regions and related counties.

* * *

SECTION 5 – COVERED SERVICES

MI Health Link offers the following services:

- Medicare covered services, including pharmacy
- Medicaid State Plan services, including personal care services and hearing aid coverage . . .

* * *

5.1 STATE PLAN PERSONAL CARE SERVICES

For individuals enrolled in the MI Health Link program, State Plan personal care services will be provided and paid for by the ICO and will no longer be provided through the Medicaid Home Help program. Personal care services are available to individuals who require hands-on assistance in activities of daily living (ADLs) (i.e., eating, toileting, bathing, grooming, dressing, mobility, and transferring) as well as hands-on assistance in instrumental activities of daily living (IADLs) (i.e., personal laundry, light housekeeping, shopping, meal preparation and cleanup, and medication administration).

Personal care services are available to individuals living in their own homes or the home of another. Services may also be provided outside the home for the specific purpose of enabling an individual to be employed.

Providers shall be qualified individuals who work independently, contract with, or are employed by an agency. The ICO may directly hold provider agreements or contracts with independent care providers of the individual's choice, if the provider meets MDHHS qualification requirements, to provide personal care services. Individuals who currently receive personal care services from an independent care provider may elect to continue to use that provider. The individual may also select a new provider if that provider

meets State qualifications. Paid family caregivers will be permitted to serve as a personal care provider in accordance with the state's requirements for Medicaid State Plan personal care services.

* * *

5.1.B. ASSESSMENT REQUIREMENTS

During the Level I Assessment, ICO Care Coordinators (or designee who meets the qualifications for an ICO Care Coordinator) must consider if the individual may need personal care services. If the ICO Care Coordinator believes the individual may be eligible for MI Health Link personal care services, the ICO Care Coordinator will conduct the Personal Care Assessment. The face-to-face, comprehensive assessment is the basis for determining and authorizing the amount, scope and duration, and payment of services. The individual needs to be reassessed at least quarterly or with a change of functional and/or health status to determine and authorize the amount, scope and duration, and payment of services. The reassessment must be face-to-face.

ADLs and IADLs are ranked by the ICO Care Coordinator during the Personal Care Assessment. Through the assessment, ADLs and IADLs are assessed according to the following five point scale, where 1 is totally independent and 5 requires total assistance.

Independent	The individual performs the activity with no human assistance.
Verbal assistance	The individual performs the activity with verbal assistance such as reminding, guiding or encouraging.
Minimal human assistance	The individual performs the activity with some direct physical assistance and/or assistance technology.
Moderate human	The individual performs the activity with a great deal of

assistance	human assistance and/or assistive technology.
Dependent	The individual does not perform the activity even with human assistance and/or assistance technology.

An individual must be assessed with need for assistance with at least one ADL to be eligible to receive personal care services. Payment for personal care services may only be authorized for needs assessed at the level three (3) ranking or greater. In addition, the individual must have an ADL functional ranking of three (3) or greater to be eligible for IADL services. Once an individual is determined eligible for personal care services, his/her authorized ADL and IADL services and the amount, scope and duration must be included in the Individual Integrated Care and Supports Plan (IICSP).

* * *

5.1.D. REASONABLE TIME AND TASK

When a task (activity) is assigned to a specific provider, the rank of the activity is used against a Reasonable Time Schedule (RTS) table to determine the recommended time that activity should be assigned. Providers should use the RTS table provided by MDHHS to record and report minutes spent delivering services. The maximum amount is across all assigned providers for an individual, so these are case maximums. When an individual's needs exceed the hours recommended by the RTS, a rationale must be provided and maintained in the individual's record.

MPM, January 1, 2030 version
MI Health Link Chapter, pages 1, 5-9

Similarly, the Minimum Operating Standards for MI Health Link Program and MI Link HCBS Waiver state in part:

> Personal care is a Medicaid State Plan service provided in the MI Health Link program to address physical assistance needs and enable individuals to remain in their homes by avoiding or delaying the need for long term care in an

institutional setting. These services are furnished to enrollees who are not currently residing in a hospital, nursing facility, intermediate care facility for persons with developmental disabilities or institution for mental illness and are provided in accordance with 42 CFR 440.167.

Personal care services are available to persons who require hands-on assistance in activities of daily living (ADLs): eating, toileting, bathing, grooming, dressing, mobility, and transferring, as well as direct assistance in instrumental activities of daily living (IADL), including personal laundry, light housekeeping, shopping, meal preparation and cleanup, and medication administration.

Personal care services are available to people living in their own homes or the home of another. Services also may be provided outside the home, for the specific purpose of enabling a beneficiary to be employed.

An individual assessment assists in identification of service needs. People with more basic needs may be served by adults who are capable of communicating with the enrollee and being responsive to his/her needs. People with more complex needs or more specialized problems must be served by individuals who can demonstrate their competence through experience or training. See Complex Care Needs section below

Providers shall be qualified individuals who work independently or contract with or are employed by an agency. The Integrated Care Organization (ICO) will arrange for personal care services to be provided independent care provider's choice, through employment or the use of a fiscal intermediary, an agency of choice, or a Home Help or other care agency, if the individual meets MDHHS qualification requirements, to provide personal care services. Enrollees who currently receive personal care services from an independent care provider may elect to continue to use that provider or select a new provider so long as that provider meets the State qualifications. Paid family caregivers will be permitted in accordance with Michigan's State Plan for personal care services.

ICOs determine the amount, scope and duration of service provision based on the clinical observations of the enrollee's needs during the face-to-face Personal Care Assessment.

Additional hours of personal care are provided for complex care needs as described further in this guide.

* * *

ADL and IADL activities are ranked by the ICO Care Coordinator during the Personal Care Assessment. Through the assessment, ADLs and IADLs are assessed according to the following five point scale, where 1 is totally independent and 5 requires total assistance.

* * *

Reasonable Time and Task

The ICO must ensure that adequate minutes of service are provided to mee the beneficiary's needs. The Reasonable Time Schedule (below) are provided as a **guide.** The ICO may authorize more minutes per ADL as needed to meet the enrollee's needs based on observation of the enrollee's abilities during the in-person assessment.

For example, bathing ranking and the recommended times are as follows:

Activity	**Rank**	**Minutes per day**
Bathing	3	16
Bathing	4	18
Bathing	5	22

The ICO may provide higher or lower hours than shown on the Reasonable Time Schedule (RTS). Possible reasons for using higher hours include, but are not limited to, incontinence, severely impaired speech, paralysis and obesity. Possible reasons for lower hours include, but are not limited to, shared living arrangements (specifically for IADLs except for administering medications) and responsible relatives able and available to assist.

The ICO must provide adequate hours of service to mee the enrollee's needs even when that goes above the RTS. If the enrollee's needs go above the Reasonable Time Schedule, the ICO must add justification/verification to the assessments and IICSP to document the reasons for the extra needs.

Time and task is only for ADL and IADL services for the enrollee. Care for an enrollee's per does not count towards time and task.

* * *

Instrumental Activities of Daily Living

These activities require a ranking of 3, 4 or 5, but the reasonable times allotted are the same for all ranks. 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.

If the enrollee 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 personal care services are **only** for the benefit of the enrollee.

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 enrollee are completed separately from others in the home, hours for IADLs do not need to be prorated.

Example: The enrollee has special dietary needs and meals are prepared separately; the enrollee is incontinent of bowel and/or bladder and laundry is completed separately; the enrollee's shopping is completely separately due to special dietary needs and food is purchased from specialty stores.

Here, Petitioner has been approved for 40 hours per week of Personal Care Services through Respondent; Respondent decided to reduce Petitioner's services to 30 hours per week; and Petitioner requested an administrative hearing with respect to that decision.

In appealing, Petitioner bears the burden of proving by a preponderance of the evidence that Respondent erred in deciding to reduce her services. Moreover, the undersigned Administrative Law Judge is limited to reviewing Respondent's decision in light of the information that was available at the time the decision was made.

Given the available information and applicable policies in this case, Petitioner has met that burden of proof and the Respondent's decision must therefore be reversed.

Petitioner's representative credibly and fully testified regarding Petitioner's continuing need for 40 hours per week of Personal Care Services, particularly given Petitioner's recent health issues and the toll of the COVID-19 pandemic.

Moreover, while Respondent suggested that a reduction was in order because Petitioner's hours were previously based on its belief that Petitioner lived alone and not with her daughter, and the above policies do call for the proration of services for some IADLs in shared living arrangements, Respondent did not provide any evidence regarding previous assessments or demonstrate that the reduction was based on a proration.

Additionally, in just looking at the recent assessment on its own, Respondent clearly erred by utilizing maximum times that could be approved for assistance with ADLs. While the above policies do identify monthly maximum hour limits on all IADLs except medication, there is no such limits on ADLs. However, Respondent's tool explicitly identifies maximums for ADLs and as well and it appears that Respondent treats the recommended times in policy as limits. Moreover, while Respondent's witnesses later testified that they could go above those limits if necessary, the undersigned Administrative Law Judge does not find their testimony to be credible in this case given their earlier identification of maximums for ADLs and the clear identification of maximum times in the tool utilized by Respondent.

Accordingly, given Respondent's misapplication of policy and Petitioner's credible evidence, the undersigned Administrative Law Judge finds that Respondent erred in deciding to reduce Petitioner's Personal Care Services and its decision to do so must be reversed.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Respondent improperly decided to reduce Petitioner's Personal Care Services.

IT IS, THEREFORE, ORDERED that:

Respondent's decision is **REVERSED**, and it must initiate a reassessment of Petitioner's services.

Steven Kibit

SK/sb

Steven Kibit
Administrative Law Judge

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

Managed Care Plan Division
CCC, 7th Floor
Lansing, MI
48919
MDHHS-MCPD@michigan.gov

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