

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: January 13, 2022
MOAHR Docket No.: 21-005645
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 hearing was held on January 13, 2022. [REDACTED], Petitioner, appeared and testified on her own behalf. John Lambert, Appeals Review Officer, represented the Respondent, Michigan Department of Health and Human Services (MDHHS or Department). Amanda Hammon, Adult Services Worker (ASW) appeared as a witness 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 to HHS on or about October 26, 2021. (Exhibit A, p 7; Testimony)
2. Petitioner is diagnosed with hallux valgus and hammer toe. Petitioner had surgery to correct the conditions. (Exhibit A, p 13; Testimony)
3. On November 8, 2021, Petitioner's physician completed a 54A Medical Needs form, but the form did not certify a need for assistance with any personal care activity. (Exhibit A, p 13; Testimony)
4. On November 15, 2021, the ASW sent Petitioner an Advance Negative Action Notice indicating that the HHS application was denied because the 54A Medical Needs form did not certify a need for any services. (Exhibit A, p5; Testimony)

5. On November 29, 2021, Petitioner's hearing request was received by the Michigan Office of Administrative Hearings and Rules. (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.

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.
- Appropriate program enrollment type (PET) code.
- 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).

Certification of Medical Need

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 10-10M are acceptable for individuals treated by a VA physician; see ASM 115, Adult Services Requirements.

Need 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
June 1, 2020, pp 1, 3
Emphasis added*

ASM 115 ADULT SERVICES REQUIREMENTS

DHS-54A, MEDICAL NEEDS FORM

The DHS-54A, Medical Needs form must be signed and dated by a medical professional certifying a medical need for personal care services based on the existing medical condition, physical disability, or cognitive disability of the client. The medical professional must be an approved Medicaid provider, enrolled in CHAMPS, and hold one of the following professional licenses:

- Physician (M.D. or D.O.).
- Physician assistant.

- Nurse practitioner.
- Occupational therapist.
- Physical therapist.

The DHS-54A, Medical Needs form is only required for Home Help clients at the initial opening of a case, unless one of the following exists:

- The ASW assesses a decline in the client's health which significantly increases their need for services, and clarification is needed from the medical provider.
- The ASW assesses an improvement in the client's ability for self-care, resulting in a decrease or elimination of services and the client states their care needs have not changed.
- The current DHS-54A has a specified time frame for needed services and that time frame has elapsed.

The client is responsible for obtaining the medical certification of need, but the DHS-54A must be completed by the medical professional and not the client. The National Provider Identifier (NPI) number must be entered on the form, and the medical professional must indicate whether they are a Medicaid enrolled provider.

The medical professional certifies that the client's need for service is related to an existing medical condition, physical disability, or cognitive disability. **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.

The date that the valid medical provider signs the DHS-54A is the medical certification date entered into MiAIMS.

If the case is closed and reopened within 90 days with no changes in the client's condition, a new DHS-54A is not necessary.

If the case is denied and a new referral is made within 90 days of the original certification date on the DHS-54A, there is no need to obtain a new medical needs form unless there are changes in the condition of the client.

The ASW testified that on November 1, 2021, Petitioner's physician completed a 54A Medical Needs form, but the form did not certify a need for assistance with any personal care activity. Based on this, the ASW testified that on November 15, 2021, she sent Petitioner an Advance Negative Action Notice indicating that the HHS application was denied because the 54A Medical Needs form did not certify a need for any services.

Petitioner testified that she did not realize that the doctor had checked "no" on the form, and it was probably an accident as she could not walk after the surgery. Petitioner indicated that she can walk a little better on the foot now, but she is also scheduled to have surgery on the other foot soon too.

In response, the Department's witness indicated that Petitioner could reapply for HHS at any time and have her doctor correctly complete the 54-A Medical Needs Form. The Department's witness also indicated that Petitioner should pay attention to Box E on the form as well, which indicates the length of time services will be needed.

Based on the evidence presented, Petitioner has failed to prove by a preponderance of the evidence that the Department erred in denying the application for HHS. Per policy, the ASW could not approve Petitioner for HHS without a 54A Medical Needs form certifying a need for assistance with a personal care activity. Here, the evidence shows clearly that the 54A Medical Needs form submitted did not certify a need for assistance with any personal care activity. Accordingly, the denial of Petitioner's HHS application is upheld.

As indicated above, Petitioner can reapply for HHS at any time and ensure that her doctor correctly completes the 54-A Medical Needs Form. However, the undersigned has no authority to ignore clear policy and no authority to grant Petitioner any equitable relief.

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/tem

Robert J. Meade
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

Michelle Martin
Capitol Commons, 6th Floor
Lansing, MI 48909

DHHS Department Rep.

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

Petitioner

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

Agency Representative

John Lambert
MDHHS Appeals Section
PO Box 30807
Lansing, MI 48909

DHHS-Location Contact

Wendy Brown
125 E. Union St, 7th Floor
Flint, MI 48502