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GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: May 16, 2022
MOAHR Docket No.: 22-000906
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 42 CFR 431.200 *et seq.*, and upon Petitioner's request for a hearing.

After due notice, a telephone hearing was held on April 28, 2022. Petitioner appeared and testified on her own behalf. [REDACTED] Petitioner's son and caregiver, also testified as a witness for Petitioner. Theresa Root, Appeals Review Officer, appeared on behalf of the Respondent, Department of Health and Human Services (DHHS or Department). Shawnell Campbell, Adult Services Worker (ASW), testified as a witness for the Department.

During the telephone hearing, the Department submitted an evidence packet that was admitted into the record as Exhibit A, pages 1-40. No other proposed exhibits were submitted.

ISSUE

Did the Department err in determining the amount of 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 Medicaid beneficiary who has been diagnosed with hemiparesis; arthritis; headaches; and unspecified injury of the head; ulcers; hypertension; gastroesophageal reflux disease; knee replacements; degenerative disc disease; and lumbago. (Exhibit A, page 10).
2. Due her diagnoses and need for assistance, Petitioner has been approved

for HHS through the Department. (Exhibit A, pages 11-19).

3. As of December 1, 2021, Petitioner was approved for \$758.94 per month in HHS. (Exhibit A, page 19).
4. Specifically, she was approved for 8 minutes per day, 7 days per week (4:01 per month) of assistance with bathing; 7 minutes per day, 7 days per week (3:31 per month) of assistance with dressing; 3 minutes per day, 7 days per week (1:30 per month) of assistance with eating; 8 minutes per day, 2 days per week (1:09 per month) of assistance with grooming; 7 minutes per day, 7 days per week (3:31 per month) of assistance with mobility; 3 minutes per day, 7 days per week (1:30 per month) of assistance with toileting; 3 minutes per day, 7 days per week (1:30 per month) of assistance with transferring; 6 minutes per day, 7 days per week (3:01 per month) of assistance with housework; 24 minutes per day, 2 days per week (3:26 per month) of assistance with laundry; 2 minutes per day, 7 days per week (1:00 per month) of assistance with medications; 25 minutes per day, 7 days per week (12:32 per month) of assistance with meal preparation; 17 minutes per day, 2 days per week (2:26 per month) of assistance with shopping; and 10 minutes per day, 2 days per week (1:26 per month) of assistance with travel for shopping. (Exhibit A, page 19).
5. Petitioner's HHS for assistance with the Instrumental Activities of Daily Living (IADLs) of housework, laundry, meal preparation and shopping would have been higher, but Petitioner lived in a shared living arrangement and the ASW therefore prorated her HHS for those tasks by one half pursuant to policy. (Testimony of ASW).
6. On December 20, 2021, the ASW conducted a routine six-month review with Petitioner; and, during that assessment, Petitioner reported no changes with her needs. (Exhibit A, page 8; Testimony of Petitioner; Testimony of ASW).
7. Petitioner did report that she now lives alone. (Exhibit A, page 8; Testimony of Petitioner; Testimony of ASW).
8. On January 7, 2022, the ASW also interviewed Petitioner's home help provider; and, during that interview, the provider did not report any changes with Petitioner's needs. (Exhibit A, page 7; Testimony of Petitioner's representative; Testimony of ASW).
9. Given that Petitioner now lived alone, the ASW determined that the one half proration of Petitioner's IADLs should be removed, and Petitioner's HHS increased. (Testimony of ASW).
10. On January 7, 2022, the ASW sent Petitioner a Services and Payment

Approval Notice stating that, effective January 1, 2022, Petitioner's HHS would be increased to 48 hours and 48 minutes per month. (Exhibit A, pages 6-7).

11. However, while Petitioner's HHS were increased overall, her assistance with the Activities of Daily Living (ADLs) of bathing, dressing, mobility, toileting, and transferring was reduced as part of that action. (Exhibit A, pages 18-19).
12. On March 1, 2022, the Michigan Office of Administrative Hearings and Rules (MOAHR) received the request for hearing filed in this matter regarding the amount of HHS approved. (Exhibit A, pages 4-6).
13. On March 28, 2022, the Department reviewed Petitioner's case and determined that the assistance with Petitioner's ADLs should be reestablished to the higher amounts in place prior to the January 1, 2022, action. (Exhibit A, page 20; Testimony of ASW).
14. A notice was also sent out, and the increase in assistance with ADLs was made retroactive to January 1, 2022. (Exhibit A, pages 20-21).
15. With that change, Petitioner's HHS was approved for 58 hours and 50 minutes per month of HHS, with a total monthly care cost of \$1,100.87 per month in HHS. (Exhibit A, page 21).
16. The specific changes remaining were increases in assistance with housework from 6 minutes per day, 7 days per week (3:01 per month) to 12 minutes per day, 7 days per week (6:01 per month); laundry from 24 minutes per day, 2 days per week (3:26 per month) to 30 minutes per day, 2 days per week (4:18 per month); meal preparation from 25 minutes per day, 7 days per week (12:32 per month) to 50 minutes per day, 7 days per day (25:05 per month); and shopping from 17 minutes per day, 2 days per week (2:26 per month) to 30 minutes per day, 2 days per week (4:18 per month). (Exhibit A, pages 18-21).

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

Adult Services Manual (ASM) 101 (4-1-2018) and ASM 120 (4-1-2021) address the issues of what services were included in HHS and how such services are assessed in this case. For example, ASM 101 provides in part:

Home help services are non-specialized personal care service activities provided under the independent living 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 specialist.

Personal care 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) 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.

Example: Ms. Smith is assessed at a level 4 for bathing however she refuses to receive assistance. Ms. Smith would be eligible to receive assistance with IADL's [sic] if the assessment determines a need at a level 3 or greater.

Note: If an individual uses adaptive equipment to assist with an ADL, and without the use of this equipment the person would require hands-on care, the individual must be ranked a level 3 or greater on the functional assessment. This individual would be eligible to receive home help services.

Example: Mr. Jones utilizes a transfer bench to get in and out of the bathtub which allows him to bathe himself without the hands-on assistance of another. The adult services specialist must rank Mr. Jones a 3 or greater under the functional assessment. Mr. Jones would be eligible to receive home help services.

Assistive technology would include such items as walkers, wheelchairs, canes, reachers, lift chairs, bath benches, grab bars and handheld showers.

* * *

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, pages 1-3, 4-5

Moreover, ASM 120 states in part:

Functional Tab

The *Functional* Tab under *Assessment* module in MiAIMS is the basis for service planning and for 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 3 level 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.

Example: Ms. Smith is assessed at a level 4 for bathing however she refuses to receive assistance, or her daughter

agrees to assist her at no charge. Ms. Smith would be eligible to receive assistance with IADL's [sic] if the assessment determines a need at a level 3 or greater.

Note: If an individual uses adaptive equipment to assist with an ADL, and without the use of this equipment the person would require hands-on care, the individual must be ranked a level 3 or greater on the functional tab under assessment. This individual would be eligible to receive home help services.

Example: Mr. Jones utilizes a transfer bench to get in and out of the bathtub, which allows him to bathe himself without the hands-on assistance of another. The adult services worker (ASW) must rank Mr. Jones a 3 or greater under the functional abilities tab. Mr. Jones would be eligible to receive home help services.

Assistive technology includes such items as walkers, wheelchairs, canes, reachers, lift chairs, bath benches, grab bars and hand-held showers.

See ASM 121, Functional Assessment Definitions and Ranks for a description of the rankings for activities of daily living and instrumental activities of daily living.

* * *

Time and Task

The ASW will allocate time for each task assessed at 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 tab within MiAIMS for each task. ASW's should modify how much time is needed based on the client's documented need.

MiAIMS includes a functional assessment time based on the ASW's assessment of the client's needs. MiAIMS also has a provider time and task based on the client's choice of activities and frequency to be performed by their chosen provider. The client functional assessment summary may be different from the provider time and task due to client choice or provider availability. The client's functional assessment summary indicates the maximum approved time based on

the client's assessed need. Upon client request, the provider authorization may exceed the provider time and task, but may not exceed the client functional assessment. The ASW should document the reason for the variance from the provider time and task in the payment rationale box in MiAIMS.

Note: This allows flexibility for client choice while also assuring the basic needs of the client are being met. The caregiver must correctly document which tasks they are performing.

* * *

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 adjoining 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.
- Caregiver does not live with the client and completes the client's laundry, shopping, and meal preparation separately from the client's roommate. The client's roommate does their own laundry, shopping, and meal preparation, therefore, these IADLs are not prorated because the client is the only person benefiting from the service. However, housework is prorated as it is a common living area.

*ASM 120, pages 2-7
(italics added for emphasis)*

Here, the Department approved Petitioner for 58 hours and 50 minutes per month of HHS pursuant to the above policies.

In support of the Department's decision, the ASW testified that the amount authorized was based on what Petitioner had been previously approved for, with neither Petitioner nor her provider reporting any changes in her needs or requesting any increase in services during the most recent review. She also testified that, while there were no changes, Petitioner's HHS were increased because Petitioner now lives alone and, consequently, the proration of Petitioner's assistance with IADLs had to be removed. She further testified that, while she also mistakenly reduced Petitioner's assistance with ADLs initially, that error was corrected, and a retroactive authorization was made.

In response to questioning from the undersigned Administrative Law Judge about why Petitioner's assistance with the IADLs of laundry and shopping did not double after the proration by one-half was removed, the ASW testified regarding the IADL maximum allowable hours and the Department's computer system. She also testified that the hours authorized are sufficient to meet Petitioner's needs.

Petitioner in turn testified that she needs more help generally and more time with bathing specifically. She also testified that her caregiver stays longer than he is paid for. She further testified that, when she spoke to the ASW during the most recent review,

she only mentioned that her caregiver had moved out and she did not make any mention of any changes in her needs or request additional services.

Petitioner's representative/caregiver testified that Petitioner's medical conditions are getting worse and that she does not have enough HHS. He also testified initially that he never spoke with the ASW, but later testified that he did speak with her and that he did not report any changes or indicate a need for additional services.

Petitioner bears the burden of proving by a preponderance of the evidence that the Department erred in this case. Moreover, the undersigned Administrative Law Judge is limited to reviewing the Department'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 her burden of proof and the Department's decision must therefore be reversed.

As described by the ASW, the proposed increase she intended to make was proper as Petitioner reported no longer living alone, but neither Petitioner nor her caregiver reported a change in her needs or requested additional services. Accordingly, as planned by the ASW, the only change that should have been made was a removal of the proration of HHS for assistance with the IADLs of housework, laundry, meal preparation and shopping.

Whatever she planned to do however, that was not the subsequent action taken by the ASW and, while Petitioner's HHS were increased overall, the Department erred by (1) reducing Petitioner's assistance with the ADLs of bathing, dressing, mobility, toileting, and transferring; and (2) failing to sufficiently increase her HHS for assistance with the IADLs of laundry and shopping.

The Department subsequently corrected the first error and retroactively reestablished Petitioner's ADLs to the higher amounts in place prior to the January 1, 2022, action. Accordingly, that error has been remedied and need not be addressed further.

The Department did not correct the second error and contests whether it is an error at all. However, the record is clear that, while Petitioner's assistance with the IADLs of shopping and laundry were increased, they were not increased enough given the circumstances.

The Department had previously prorated Petitioner's assistance with laundry and shopping by one half due to Petitioner's shared living arrangement and, consequently, Petitioner's HHS for those two tasks should have doubled once the shared living arrangement ended and the one half proration was removed. Here, assistance with laundry only went from 24 minutes per day, 2 days per week (3:26 per month) to 30 minutes per day, 2 days per week (4:18 per month) while assistance with shopping only went from 17 minutes per day, 2 days per week (2:26 per month) to 30 minutes per day, 2 days per week (4:18 per month).

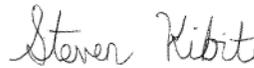
Moreover, the ASW's testimony explaining the action is unpersuasive. For example, while she cited to the IADL maximum allowable hours, Petitioner was not at the maximum for either task. Similarly, while she discussed the Department's computer system, the computer system does not dictate times and tasks. Finally, while she testified that the hours authorized are sufficient to meet Petitioner's needs, she had previously found an increased amount, which was subsequently prorated, and she did not identify any changes found through further assessment that would suggest less services were appropriate.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED that:

The Department's action is **REVERSED**, and it must initiate a reassessment of Petitioner's HHS.



Steven Kibit
Administrative Law Judge

SK/dh

NOTICE OF APPEAL: Petitioner 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

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