



GRETCHEN WHITMER
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: August 11, 2022
MOAHR Docket No.: 22-002135
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 August 2, 2022. [REDACTED], Petitioner's son and caregiver, appeared and testified on Petitioner's behalf. Petitioner and Dr. Joanna Sattar, M.D., also testified as witnesses for Petitioner.

Lisa Johnson, Appeals and Grievance Lead, appeared and testified on behalf of Molina Healthcare, the Respondent Integrated Care Organization (ICO). Dr. Keith Tarter, Senior Medical Director, and Rebecca Borst, Manager, also testified as witnesses for Respondent.

During the hearing, Respondent submitted an evidence packet that was admitted into the record as Exhibit A, pages 1-32. Petitioner did not submit any exhibits.

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. Petitioner is a [REDACTED] ([REDACTED]) year-old Medicaid beneficiary who was previously enrolled in the Home Help Services Program administered by the Michigan Department of Health and Human Services ("Department"). (Exhibit A, page 5; Testimony of Respondent's Manager).
2. Through that program, Petitioner received 27.5 hours per week of services for assistance with his Activities of Daily Living (ADLs) and Instrumental

Activities of Daily Living (IADLs). (Testimony of Petitioner's representative; Testimony of Respondent's Manager).

3. In 2022, Petitioner enrolled in the MI Health Link Program, a capitated managed care program integrating 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. (Adult Services Manual (ASM) 126; Testimony of Respondent's Manager).
4. Petitioner's services through the MI Health Link Program are administered by Respondent, an Integrated Care Organization (ICO) contracted by the Department and the Centers for Medicare & Medicaid Services (CMS) to provide covered services. (ASM 126; Testimony of Respondent's Manager).
5. Through Respondent, Petitioner was initially approved for 27.5 hours of personal care services per week. (Testimony of Petitioner's representative).
6. On April 5, 2022, Respondent completed a review of Petitioner's needs and services. (Exhibit A, pages 5-11).
7. On April 8, 2022, Respondent sent Petitioner a written Notice of Denial of Medical Coverage in which it stated that Respondent had partially approved Petitioner's requested personal care services. (Exhibit A, pages 15-18).
8. With respect to the reason for the action, the notice also stated:

You have been getting 27 hours and 30 minutes of personal care services per week. A state required Personal Care Assessment was done. This was done by a Molina Healthcare Supports Coordinator. It was done on April 5, 2022. This tool assigns time and task based on your ability to do activities. It looks at Activities of Daily Living. These are dressing, grooming, feeding and toileting. It also includes Instrumental Activities of Daily Living. These are skills that let you take care of yourself. A reasonable time schedule (RTS) table is used. The RTS assigns a suggested amount of time for an activity or task. The RTS table gives a reasonable time allowed for each task.

Based on the results of the assessment, the right number of hours is 16 hours of personal care services per week. Please talk to your

doctor about what else can be done for you.

The following rules were used in making the decision: Medicaid Provider Manual Section 5.1.D Reasonable Time and Task. You may call and ask for a copy of this document.

Exhibit A, page 15

9. On April 25, 2022, Petitioner filed an Internal Appeal with Respondent regarding that decision. (Exhibit A, pages 20-22).
10. On May 5, 2022, Respondent sent Petitioner a written Notice of Appeal Decision in which it stated that Petitioner's appeal was denied. (Exhibit A, pages 24-27).
11. With respect to the reason for the denial, the notice stated:

We *denied* your appeal for the service listed above because: The decision to decrease member from 27.5 hours to 16 hours a week is being upheld per the documentation that was self-reported and based on your ability to perform Activities of Daily Living and Instrumental Activities of Daily Living.

Our health plan upheld the decision based on the following criteria: Minimal Operating Standards (MOS), Medicaid Provider Manual: Section 5.12. Continuity of Care for Personal Care Services and 5.1.F. Reimbursement and Rates.

Exhibit A, page 24

12. On May 17, 2022, the Michigan Office Administrative Hearings and Rules (MOAHR) received the request for hearing filed in this matter regarding a reduction in Petitioner's personal care services. (Exhibit A, pages 3-4).

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 assistance | The individual performs the activity with a great deal of 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, April 1, 2022 version
MI Health Link Chapter, pages 1, 5-7*

Here, Petitioner was previously approved for 27.5 hours per week of Personal Care Services through Respondent; Respondent decided to reduce Petitioner's services to 16 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 his 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 failed to meet that burden of proof and the Respondent's decision must therefore be affirmed.

Petitioner was previously approved for 27.5 hours per week of services through the Home Help Program, but that alone does not warrant the same approval through the MI Health Link Program and Respondent's Manager credibly explained the assessment

completed in this case and the reason for the reduced authorization. In particular, she explained how Petitioner was ranked for each ADL and IADL; the RTS and recommended times were reviewed for each ranking; and the authorized services were based on Petitioner's actual needs, with Respondent approving more services than recommended for some tasks and fewer services for other tasks as appropriate.

Moreover, while Petitioner's representative disputed that authorization and testified that it was insufficient to meet Petitioner's needs or the amount of work the caregiver completed, his testimony was ultimately unpersuasive as it was very broad and he declined to describe in what areas, if any, the assessment was incorrect. Similarly, Petitioner's other witnesses also just generally and insufficiently asserted a need for more time.

Petitioner's representative did testify that the assessment was inaccurate because it was based on Petitioner's reports, and Petitioner will exaggerate his abilities and downplay his needs. However, as discussed above, the undersigned Administrative Law Judge is limited to reviewing Respondent's decision in light of the information that was available at the time and Respondent was justified in relying on Petitioner's reports.

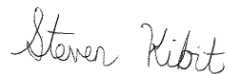
To the extent Petitioner has updated or additional information to provide, he can always request an increase in services in the future. With respect to the decision at issue in this case, however, Respondent's decision must be affirmed given the available information and applicable policies.

DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, decides that Respondent properly decided to reduce Petitioner's Personal Care Services.

IT IS, THEREFORE, ORDERED that:

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



SK/dh

Steven Kibit
Administrative Law Judge

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

Via Electronic Mail:

DHHS Department Contact

Allison Repp
Capitol Commons
400 S. Pine St.
Lansing, MI 48909
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DHHS Department Contact

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Via First Class Mail:

Authorized Hearing Rep.

[REDACTED]
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