



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: July 8, 2022
MOAHR Docket No.: 22-002273
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; 42 CFR 431.200 to 431.250; and 42 CFR 438.400 to 438.424, upon the Petitioner's request for a hearing.

After due notice, a hearing was held on June 29, 2022. Attorney Claude Beavers appeared on behalf of the Petitioner. [REDACTED] appeared and testified. Allison Pool represented the Department of Health and Human Services (Department). Dana Gordon, Supervisor, appeared and testified for the Department. Department Exhibit A, pp. 1-39 was admitted.

ISSUE

Did the Department properly determine the appropriate level of Home Help Services (HHS) for the Petitioner?

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 receives HHS benefits.
2. On October 23, 2018, Petitioner was approved for and received HHS benefits totaling 60 hours and 24 minutes. (Ex A, p 14; Testimony.)
3. On April 20, 2022, the ASW conducted a phone interview with Petitioner and Petitioner's mother and performed an assessment. During the assessment, Petitioner's mother reported an increased need for hands on assistance with bathing, dressing, grooming, toileting and eating. (Ex A, p 17; Testimony.)
4. On April 20, 2022, the Department sent Petitioner a Services Approval

Notice. The notice indicated Petitioner's HHS benefits would be increased as a result of increasing the time for the tasks of bathing, dressing, grooming, toileting and eating. The increase resulted in a new allocation of 89 hours and 30 minutes effective April 1, 2022. (Ex A, p 9; Testimony.)

5. On May 20, 2022, the Michigan Office of Administrative Hearings and Rules (MOAHR) received from the Petitioner a request for hearing. (Ex A, p 6.)

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.

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
September 1, 2021, 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**. The 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 the **Assessment** module in MiAIMS is the basis for service planning and for the Home Help services payment. Document the client's abilities and needs in the **Functional** 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 5-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 ranking of level 3 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.

*Adult Services Manual 120
April 1, 2021, pp 1-3
Emphasis added*

In this case, it was indicated Petitioner was requesting a hearing because Petitioner disagreed with the Department's determination of HHS. Petitioner indicated there must have been a misunderstanding.

The ASW who performed the assessment and made the decision to increase Petitioner's HHS benefits, testified the increase decision was based on the information that was provided during the assessment. Petitioner's mother testified at the hearing that the ADL tasks took longer than the allotted time, specifically bathing and dressing.

After a complete review of the record, I conclude the Department has established by the necessary competent, material and substantial evidence on the record that it was acting in accordance with Department policy when it calculated the Petitioner's HHS benefits. Petitioner has failed to satisfy the burden of proving by a preponderance of the evidence that the Department improperly determined her HHS benefits. The 22 minutes a day allotted for bathing and 18 minutes a day for dressing, was reasonable and appropriate.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly calculated the Petitioner's HHS benefits.

IT IS, THEREFORE, ORDERED that:

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



AM/dh

Aaron McClintic
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

Via Electronic Mail:

DHHS Dept. Contact

Michelle Martin
Capitol Commons, 6th Floor
Lansing, MI 48909
**MDHHS-Home-Help-
Policy@michigan.gov**

DHHS Department Rep.

M. Carrier
MDHHS Appeals Section
P.O. Box 30807
Lansing, MI 48909
MDHHS-Appeals@michigan.gov

Agency Representative

Allison Pool
MDHHS Appeals Section
P.O. Box 30807
Lansing, MI 48909
MDHHS-Appeals@michigan.gov

DHHS-Location Contact

Hearings Coordinator (Oakland)
Oakland County HHS
51111 Woodward Ave., 1st Floor
Pontiac, MI 48342
**MDHHS-Oakland-6303-
Hearings@michigan.gov**

Counsel for Petitioner

Claude T. Beavers
c/o C. T. Beavers Attorney at Law
3250 Coolidge Highway
Berkley, MI 48072
claudebeavers@outlook.com

Via First Class Mail:

Petitioner

[REDACTED]
[REDACTED] MI [REDACTED]