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GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: September 29, 2022
MOAHR Docket No.: 22-003619
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 the Petitioner's request for a hearing.

After due notice, a telephone hearing was held on September 20, 2022. [REDACTED], Petitioner's mother/caregiver, appeared and testified on Petitioner's behalf. John Lambert, Appeals Review Officer, represented the Respondent, Michigan Department of Health and Human Services (DHHS or Department). Gail Johnson, Adult Services Worker (ASW), and Jocelyn Murphy, testified as witnesses for the Department.

During the hearing, the Department submitted an evidence packet that was admitted into the record as Exhibit A, pages 1-48. Petitioner did not submit any exhibits.

ISSUE

Did the Department properly deny Petitioner's request for 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 [REDACTED] (■) year-old Medicaid beneficiary who was referred for HHS through the Department on June 13, 2022. (Exhibit A, pages 7, 9).
 2. As part of the application, Petitioner's representative completed and submitted a Medical Needs form. (Exhibit A, page 17).
 3. Petitioner's representative did not identify Petitioner's diagnoses in that form, but she did indicate that Petitioner has a medical need for personal care activities, specifically checking the Instrumental Activities of Daily

Living (IADLs) of taking medication, meal preparation, shopping, laundry, and housework. (Exhibit A, page 17).

4. Petitioner's representative also subsequently submitted a Medical Needs form completed by Petitioner's medical provider, a nurse practitioner. (Exhibit A, page 18).
5. In that form, the nurse practitioner identified Petitioner's diagnoses as asthma, type 2 diabetes, and unspecified pre-eclampsia. (Exhibit A, pages 15, 18).
6. She also certified that Petitioner has a medical need for personal care activities, specifically circling the IADLs of meal preparation, shopping, laundry, and housework. (Exhibit A, page 17).
7. On July 13, 2022, the ASW completed a comprehensive assessment with Petitioner via telephone. (Exhibit A, page 13).
8. During the assessment, Petitioner reported that she had a need for hands-on assistance with her IADLs, but that, other than needing occasional help with transferring after an asthma attack, she could complete all her own Activities of Daily Living (ADLs) independently. (Exhibit A, pages 10, 13; Testimony of ASW).
9. That same day, the ASW also spoke with Petitioner's representative/care provider, who reported that she assists Petitioner with IADLs and childcare. (Exhibit A, page 14; Testimony of Petitioner's representative; Testimony of ASW).
10. On August 5, 2022, the Department sent Petitioner written notice that the request for HHS was denied because she did not qualify for HHS. (Exhibit A, page 16).
11. On August 17, 2022, the Michigan Office of Administrative Hearings and Rules (MOAHR) received the Request for Hearing filed in this matter with respect to that decision. (Exhibit A, pages 4-6).

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 statutes, 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.

Adult Services Manual (ASM) 101 (4-1-2018) and ASM 120 (4-1-2021) address the issue of what services were included in HHS and how such services were assessed at the time of the action 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.

Complex Care Needs

Complex care refers to conditions requiring intervention with special techniques and/or knowledge. These complex care tasks are performed on client's whose diagnoses or conditions require more management. The conditions may also require special treatment and equipment for which specific instructions by a health professional or client may be required in order to perform.

- Eating and feeding.
- Catheters or legs bags.
- Colostomy care.

- Bowel program.
- Suctioning.
- Specialized skin care.
- Range of motion exercises.
- Peritoneal dialysis.
- Wound care.
- Respiratory treatment.
- Ventilators.
- Injections.

When assessing a client with complex care needs, refer to the MDHHS-5535, Complex Care Assessment, from MiAIMS forms for assistance with activity ranking, frequency, and length of time needed...

ASM 120, pages 2-5

As described in the above policy, an individual is only eligible to receive HHS in general, or with any IADLs specifically, if he or she has a need for assistance with at least one ADL at a level 3 or greater on the functional scale.

In this case, the Department denied Petitioner's request for HHS on the basis that she did not have a need for assistance with any ADLs at a level 3 or greater on the functional scale. Specifically, the ASW testified and wrote in her notes that, other than an occasional need for help with transferring after an asthma attack, Petitioner did not report a need for such assistance with ADLs during the assessment; Petitioner's representative did not describe a need for any assistance with ADLs in the Medical Needs form she completed or during an interview; and Petitioner's medical doctor did not identify any need for assistance with ADLs in the Medical Needs form she completed.

In response, Petitioner's representative/caregiver testified that Petitioner has a learning disability and may not always report Petitioner's needs accurately. She also testified that she assists Petitioner with laundry, medications, transportation to the hospital, and childcare. She also testified that Petitioner's children's father is in a mental facility and unable to help.

With respect to specific ADLs, Petitioner's representative testified that she sometimes assists Petitioner with toileting and dressing, but that Petitioner is independent in all other ADLs. She also testified that she did not indicate a need for assistance with toileting or dressing in the Medical Needs form she completed because that assistance does not happen daily.

Petitioner bears the burden of proving by a preponderance of the evidence that the Department erred in denying her request for HHS. Moreover, the undersigned

Administrative Law Judge is limited to reviewing the Department's decision in light of the information it had at the time it made the decision.

Given the available information and applicable policies in this case, Petitioner has failed to meet that burden of proof and the Department's decision must be affirmed.

As provided above, an individual is only eligible to receive HHS in general, or with any IADLs, if he or she has a need for assistance with at least one ADL at a level 3 or greater on the functional scale. Here, Petitioner may have reported an occasional need for hands-on assistance with the ADL of transferring after an asthma attack during the assessment, but there was also no indication that she needed that assistance often and her statement was contradicted by the rest of her application, including an interview with her care provider where the provider stated that Petitioner was independent in all ADLs and Medical Needs forms completed by both Petitioner's care provider and her medical provider in which they only identified Petitioner as having a need for assistance with IADLs. Moreover, while Petitioner's representative testified regarding an occasional need with the ADLs of toileting and dressing during the hearing, she also agreed that she did not report that information during her interview or on any form, and the Department's decision was therefore proper based on the information provided.

To the extent Petitioner has additional or updated information to provide regarding her need for services, then she can always request services again in the future. With respect to the decision at issue in this case however, the Department's decision must be affirmed given the available information and applicable polices.

DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, decides that the Department properly denied Petitioner's request for HHS.

IT IS, THEREFORE, ORDERED that:

The Department'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

Michelle Martin
Capitol Commons
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Authorized Hearing Rep.

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