



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
SUZANNE SONNEBORN
EXECUTIVE DIRECTOR

MARLON I. BROWN, DPA
ACTING DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: October 20, 2023
MOAHR Docket No.: 23-005582
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Corey Arendt

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 October 18, 2023. [REDACTED] Petitioner's Authorized Hearing Representative, appeared on behalf of the Petitioner. [REDACTED] Petitioner's Guardian, and [REDACTED] Petitioner's Provider, appeared as witnesses for the Petitioner. Leigha Burghdoff, Appeals Review Officer, appeared on behalf of the Department of Health and Human Services (Department). Renata Back, Adult Services Worker, appeared as a witness for the Department.

Exhibits:

Petitioner	None
Department	A – Hearing Summary

ISSUE

Did the Department properly reduce Petitioner's Home Help Services (HHS) benefits?

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 at all times relevant to this proceeding Petitioner had a court appointed guardian assigned to him due to his mental health needs. (Exhibit A, p 9; Testimony.)
2. On or around October 30, 2020, Petitioner was approved for HHS. (Exhibit A, p 10.)

3. On June 6, 2023, a face-to-face assessment took place in Petitioner's home. Neither Petitioner's legal guardian nor Petitioner's Provider were present for the assessment. (Exhibit A, p 17; Testimony.)
4. As of June 6, 2023, and continuing, Petitioner had the use of only one arm and used a wheelchair to ambulate. (Testimony.)
5. Prior to June 14, 2023, Petitioner was approved for 52 hours and 18 minutes per month in HHS benefits. (Exhibit A, p 24.)
6. On June 14, 2023, the Department sent Petitioner an Advance Negative Action Notice. The notice indicated Petitioner's HHS would be reduced to 32 hours a week based on Petitioner's most recent review. (Exhibit A, pp 14-15.)
7. On June 27, 2023, the Department spoke with Petitioner's Provider. During the conversation, the Provider indicated all the services on the time and task were being provided. The Provider further expressed concerns regarding the reduction. (Exhibit A, p 23.)
8. On August 15, 2023, the Michigan Office of Administrative Hearings and Rules, received from Petitioner, a request for hearing. (Exhibit A, p 8.)

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.

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.

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 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 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 bath himself without the hands-on assistance of another. The adult services worker 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. This list is not all inclusive.

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.¹

ASM 105 ELIGIBILITY CRITERIA

GENERAL

Requirements

Home help eligibility requirements include **all** of the following:

- Medicaid eligibility.
- Appropriate Program Enrollment Type (PET) status.
- 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.

Either 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.

¹ Adult Services Manual (ASM) 101, Available Services, April 1, 2018, pp 1-5.

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) to be eligible to receive home help services.²

ASM 115 ADULT SERVICES REQUIREMENTS

MDHHS-5534, ADULT SERVICES COMPREHENSIVE ASSESSMENT

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, and then every six months in the client's home for the review.³

ASM 120 ADULT SERVICES COMPREHENSIVE ASSESSMENT

OVERVIEW

The MDHHS-5534, Adult Services Comprehensive Assessment, is the primary tool for determining a client's need for services. The comprehensive assessment must be completed on all open Home Help services cases. The Michigan Adult Integrated Management System

² ASM 105, Eligibility Criteria, June 1, 2020, pp 1, 3.

³ ASM 115, Adult Services Requirements, May 1, 2023, pp 4-5.

(MiAIMS) provides the format for the comprehensive assessment and all information must be entered in the computer program.

Functional 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 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 level 3 ranking 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.⁴

In this case, it was indicated Petitioner was requesting a hearing because Petitioner disagreed with the Department's decision to reduce Petitioner's HHS allocation.

The ASW who performed the assessment and made the decision to reduce Petitioner's HHS benefits testified the reduction decision was based on the information that was provided during the assessment along with information that was shared during a telephone call with Petitioner's guardian. The ASW indicated both the Petitioner and the guardian had indicated Petitioner was able to toilet, transfer and move around independently.

Petitioner argued a need for the former allocation as the Petitioner required assistance in the areas that were being reduced. One of Petitioner's witnesses also disputed the information that was alleged by the ASW to be shared during a telephone conversation.

The undisputed evidence indicates Petitioner has the use of one arm and uses a wheelchair to ambulate. The undisputed evidence also indicates Petitioner has a legal guardian assigned due to mental health issues and an inability to make decisions on his own.

⁴ ASM 120, Adult Services Comprehensive Assessment, May 1, 2023, pp 1-3.

After a complete review of the record, I conclude the Department has failed to establish by the necessary competent, material, and substantial evidence on the record that it was acting in accordance with Department policy when it reduced the Petitioner's HHS benefits. The Petitioner has a legal guardian assigned to him for a reason. As a result, the Department should not have relied on the information shared with the ASW in the absence of Petitioner's legal guardian or provider. It is clear the Petitioner is eligible for Home Help Services and the dispute is only as to the level of care needed/required. As a result, the Department should rescind the prior negative action notice and complete a new assessment in the presence of Petitioner's guardian and or Provider and issue benefits if otherwise eligible or qualified.

DECISION AND ORDER

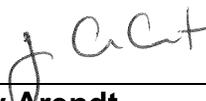
The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department improperly reduced the Petitioner's HHS benefits.

IT IS, THEREFORE, ORDERED that:

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

The Department is further ordered to conduct a new assessment in the presence of Petitioner's legal guardian and/or Petitioner's provider and issue benefits if otherwise eligible and qualified.

CA/pe



Corey Arendt
Administrative Law Judge
for Elizabeth Hertel, Director
Department of Health and Human Services

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:

Petitioner

[REDACTED]
MI [REDACTED]
[REDACTED]

Authorized Hearing Representative

[REDACTED]
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