



GRETCHEN WHITMER
GOVERNOR

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

MARLON I. BROWN, DPA
ACTING DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: October 27, 2023
MOAHR Docket No.: 23-005938
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 October 25, 2023. [REDACTED] Petitioner's sister, appeared and testified on Petitioner's behalf. Leigha Burghdoff, Appeals Review Officer, represented the Respondent Department of Health and Human Services (DHHS or Department). Alisa Scott, Adult Services Worker (ASW), testified as a witness for the Department.

During the hearing, the Department submitted an evidence packet that was admitted into the record as Exhibit A, pages 1-52. 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. On July 31, 2023, Petitioner was referred for HHS through the Department. (Exhibit A, page 19).
2. As part of his application, Petitioner indicated that he lived with his spouse and two minor children. (Exhibit A, pages 15, 26).
3. Petitioner's spouse also maintains her address at the same address as Petitioner. (Exhibit A, page 30; Testimony of Petitioner's representative).

4. On August 29, 2023, the Adult Services Worker (ASW) completed an initial assessment with Petitioner and his representative at Petitioner's home. (Exhibit A, page 28).
5. During a subsequent telephone call, Petitioner's representative reported that Petitioner's spouse does not live with Petitioner and that they do not know her whereabouts. (Exhibit A, page 29).
6. On September 14, 2023, the Department sent Petitioner notice that his request for HHS had been denied. (Exhibit A, pages 23-24).

7. With respect to the reason for the denial the notice stated"

Application for Home Help Services denied to responsible relative ASM 120. Per ASM 135, individuals who are married but separated from their spouse must provide verification that they are no longer living in the home.

Exhibit A, page 23

8. On September 21, 2023, the Michigan Office of Administrative Hearings and Rules (MOAHR) received the request for hearing filed by Petitioner in this matter with respect to that decision. (Exhibit A, pages 7-18).

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) addresses 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
(italics added for emphasis)*

Moreover, regarding responsible relatives referenced in the above policy, ASM 120 (5-1-2023) further states in part:

Responsible Relatives

A responsible relative is defined as an individual's spouse or a parent of an unmarried child under the age of 18. Activities of daily living (ADLs) may be approved when the responsible relative is **unavailable** or **unable** to provide these services.

Note: Unavailable means absence from the home for an extended period due to employment, school, or other legitimate reasons. The responsible relative must provide a work or school schedule to verify they are unavailable to provide care. **Unable** means the responsible person has disabilities of their own which prevent them from providing care. These disabilities must be documented and verified by a medical professional on the DHS-54A, Medical Needs, form.

Do **not** approve shopping, laundry, or light housecleaning when a responsible relative of the client resides in the home, **unless** they are unavailable or unable to provide these services. Document findings in the Contacts module in MiAIMS.

Example: Mrs. Smith needs Home Help services. Her spouse is employed and is out of the home Monday through Friday from 7a.m. to 7p.m. The ASW would not approve hours for shopping, laundry, or house cleaning as Mr. Smith is responsible for these tasks and is able to complete these tasks on the weekends.

ASM 120, pages 7-8

Moreover, with respect to responsible relatives, ASM 135 (5-1-2023) further provides:

Do **not** pay Home Help services to:

- A responsible relative (a spouse caring for a spouse or a parent caring for a minor child).

Note: Individuals who are married, but separated from their spouse, must provide verification that they are no longer residing in the same home (responsible relatives must be unable or unavailable for the client to be eligible to receive Home Help services). Verification may include their driver's license, rent receipt, or utility bill reflecting their separate mailing address. A spouse who is separated from a spouse **cannot** be the individual paid to provide Home Help services.

ASM 135, page 1

As described in the above policy, HHS cannot be approved for services for which a responsible relative is able and available to provide.

Here, the Department found that Petitioner's spouse was a responsible relative able and available to provide care, and it therefore denied Petitioner's request for HHS.

In appealing that decision, Petitioner bears the burden of proving by a preponderance of the evidence, that the Department erred. 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.

It is undisputed in this case that Petitioner is married and there is nothing in the record to suggest that she is physically unable to provide the necessary care.

Moreover, while Petitioner's representative told the Department and testified during the hearing that Petitioner's wife is unavailable to provide care due to the fact that Petitioner's wife no longer lives with Petitioner, and Petitioner does not know her whereabouts, her claims are unpersuasive.

As provided ASM 135, individuals who are married, but separated from their spouse, must provide verification that they are no longer residing in the same home, with types of acceptable verification including their driver's license, rent receipt, or utility bill reflecting their separate mailing address.

Here, Petitioner provided no such verification beyond his representative's unsupported statements while his own application indicates that he lives with his spouse, and it is undisputed that she maintains the same mailing address as Petitioner.

To the extent Petitioner has additional or updated information to provide regarding the unavailability of his spouse, then he 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 policies.

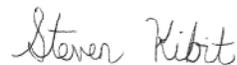
DECISION AND ORDER

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/sj



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

PROOF OF SERVICE

I certify that I served a copy of the foregoing document upon all parties, to their last known addresses in the manner specified below, this 27th day of October 2023.

S. James

S. James
**Michigan Office of Administrative
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