



GRETCHEN WHITMER
GOVERNOR

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

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ACTING DIRECTOR

[REDACTED]
[REDACTED] MI [REDACTED]

Date Mailed: November 21, 2023
MOAHR Docket No.: 23-006722
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 November 9, 2023. Dawn Calnen, Executive Director of The Arc of Oakland County, appeared on behalf of Petitioner. Allison Pool, Appeals Review Officer, appeared on behalf of the Respondent, the Michigan Department of Health, and Human Services (Department).

Witnesses:

Petitioner [REDACTED]

Department LaJuan Craft
Kathy Nance
Angela Clymer

Exhibits:

Petitioner 1. Time and Task Study

Department A. Hearing Summary

ISSUE

Did the Department properly increase the amount of Petitioner's Home Help Services (HHS) benefit?

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 has been receiving HHS since at least 2013. (Exhibit A.)
2. Prior to June 15, 2023, Petitioner was approved for 286 hours and 52 Minutes a month of HHS. (Exhibit A; Testimony.)
3. On June 15, 2023, a quality review assessment was conducted by IMPROVe Health with Petitioner, and Petitioner's caregiver [REDACTED]. All tasks were reviewed and discussed with Petitioner and his caregiver. (Exhibit A; Testimony.)
4. Following the review, the Department determined Petitioner should receive an increase in the areas of eating, tube feeding, toileting, bathing, dressing, range of motion exercises, medications, suctioning, with a reduction in the areas of grooming and repositioning, and no changes in the areas of transferring, mobility, meal preparation, shopping, laundry, and housework. (Exhibit A; Testimony.) The Department's notes of the review included the following summary:

[REDACTED] is a [REDACTED]-year-old male that resides in his own home alone. His diagnosis includes Muscular Dystrophy, Merosin Deficient, Chronic Respiratory Failure, Scoliosis, and Mitral Valve Prolapse. [REDACTED] is completely dependent on provider for all ADL's and IADL's. He is non-weight bearing. Is able to move himself in motorized wheelchair at times, if positioned appropriately. [REDACTED] is verbal, difficult to understand r/t trach. Speaks slowly. [REDACTED] has a tracheostomy and reports that due to disease progression, he requires more oral and trach suctioning daily. [REDACTED] eats meals by mouth and via feeding tube. He reports that his care needs have increased due to his overall disease progression. [REDACTED] works outside his home with caregiver assisting him while at work. [REDACTED] denies any skin conditions or any new clinical change in condition but did state that his providers are monitoring his heart health more closely now r/t disease progression. He has not had any ED visits

recently. He reports that his last procedure was in 2022 for dental needs.¹

5. On July 19, 2023, the Department sent Petitioner an approval notice informing Petitioner of an increase in his HHS benefit to 346 hours and 9 minute a month based on the recent assessment. (Exhibit A; Testimony.)
6. On July 21, 2023, Petitioner's mother sent an email to the Department. The email provided the following:

Unfortunately, due to [REDACTED] complex needs and the overlap in some of the CLS hrs/Adult Home Help hours/tasks, the addition of 60 additional hours per month results in an additional hardship in finding staff at the lower wage for such complex care. The additional AHH hours drag down the wage for [REDACTED] and in him meeting with you and trying to do the right thing, it resulted in less money to attract potential caregivers. I have heard on numerous occasions from potential caregivers that the amount of care needed does not match the wage offered.²

7. On October 16, 2023, the Michigan Office of Administrative Hearings and Rules, received from Petitioner, a request for hearing. (Exhibit A.)
8. At all times relevant to this proceeding, Petitioner has not had a guardian or power of attorney. (Testimony.)

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:

¹ Exhibit A, p 24.

² Exhibit A, p 11.

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.³

ASM 105 ELIGIBILITY CRITERIA

GENERAL

Requirements

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

- Medicaid eligibility.
- Appropriate Program Enrollment Type (PET) code.
- 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:

³ Adult Services Manual 101, April 1, 2018, pp 1-2.

- 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.

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) at a level 3 or greater to be eligible to receive Home Help services.⁴

ASM 115 ADULT SERVICES REQUIREMENTS

MDHHS-5534, ADULT SERVICES COMPREHENSIVE ASSESSMENT

The ASW must conduct a face-to-face interview with the client in their home to assess the personal care needs. During the assessment, complete the MDHHS-5534, Adult Services Comprehensive Assessment, which is generated from MiAIMS; see ASM 120, Adult Services Comprehensive Assessment.

⁴ Adult Services Manual 105, June 1, 2020, pp 1, 3.

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 for the review.⁵

ASM 120 ADULT SERVICES COMPREHENSIVE ASSESSMENT

OVERVIEW

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**. Michigan Adult Integrated Management System (MiAIMS), provides the format for the comprehensive assessment and all information must be entered on the computer program.

Functional Tab

The **Functional** Tab under **Assessment** module of MiAIMS is the basis for service planning and for the 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.

⁵ Adult Services Manual 115, May 1, 2023, pp 4, 5.

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 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.

Complex Care Needs

Complex care refers to conditions requiring intervention with special techniques and/or knowledge. These complex care tasks are performed on clients whose diagnoses or conditions require more management. Prior to performing complex care tasks, some conditions may also require special treatment and/or equipment instructions provided by the client or a health care professional, for example:

- 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 the Forms module in MiAIMS for assistance with activity ranking, frequency, and length of time needed per occurrence

Time and Task

The ASW will allocate time for each task assessed a rank of 3 or greater, based on interviews with the client and caregiver, observation of the client's abilities and use of the reasonable time schedule (RTS) as a **guide**. The RTS is built into the functional assessment tab within MiAIMS for each task. ASW's should modify how much time is needed based on clients' documented need.

IADL Maximum Allowable Hours

There are monthly maximum hour limits on all instrumental activities of daily living (IADL) except medication. The limits are as follows:

- Five hours/month for shopping.
- Six hours/month for light housework.
- Seven hours/month for laundry.
- 25 hours/month for meal preparation.

Proration of IADLs

If the client does not require the maximum allowable hours for IADLs, authorize only the amount of time needed for each task. Assessed hours for IADLs (except medications) must be prorated by **one half** in shared living arrangements where other adults reside in the home, as Home Help services are **only** for the benefit of the client.⁶

PARTNERSHIPS

The adult services worker (ASW) has a critical role in developing and maintaining partnerships with community resources. To facilitate these partnerships the adult services worker will:

- Advocate for programs to address the needs of clients.
- Emphasize client choice and quality outcomes.
- Encourage access and availability of supportive services.
- Work cooperatively with other agencies to ensure effective coordination of services.
- Coordinate available resources with Home Help services in developing a plan of care that addresses the full range of client needs.

The Medicaid State Plan program for personal care services is Home Help. Medicaid (MA) also includes several other programs, listed below, with personal care services. ASWs

⁶ Adult Services Manual 120, May 1, 2023, pp 1-7.

should be familiar with each of the programs to help clients understand what resources are available to them.

COMMUNITY MENTAL HEALTH (CMH)

Many clients are eligible to receive both, Home Help services and mental health services through the local Community Mental Health Services Programs (CMHSPs) or Prepaid Inpatient Health Plans (PIHPs). ASWs should contact their local CMH for procedures on how to obtain protected client information for mutual clients.

Clients who live in unlicensed settings where Home Help services may be provided include:

- Own home/apartment, either living alone or with roommates or relatives. Client's name is on the lease or mortgage.
- Home of a family member.
- Supported independent setting (formerly called SIP homes). The lease is held by an individual that is not also the individual caregiver or agency provider/caregiver of other services such as Home Help.

Note: The instrumental activities of daily living (IADLs) in shared living arrangements must be divided by one half unless justified.

Community Living Supports (CLS)

Clients eligible for Home Help services authorized by the adult services worker may also receive Community Living Supports (CLS) authorized through the local Community Mental Health Services Programs (CMHSPs) or Prepaid Inpatient Health Plans (PIHPs). Community Living Supports services cannot duplicate or replace Home Help services. **Clients who are seeking personal care services and are eligible to receive both programs, must first apply for Home Help services as Home Help is the first payer.**

The client's plan should clearly identify where Home Help and Community Living Supports are complementary. The ASW determines the need for services based on the MDHHS-5534, Adult Services Comprehensive Assessment. If the client is receiving the maximum authorized through

Home Help and still needs additional hands-on assistance with some ADLs and/or IADLs in order to remain at home, Community Living Supports services may be used to provide that additional direct physical assistance which exceeds the cost of care determined by the Michigan Department of Health and Human Services (MDHHS) comprehensive assessment.

Unlike Home Help, which only provides direct hands-on assistance with ADLs and IADLs, Community Living Supports services typically are used for skill development or supervision. In such situations, the use of both Home Help and Community Living Supports is permitted as the services are different and not a duplication.

The Community Living Supports services may not supersede or replace Home Help services. The client must exhaust all available services under Home Help before seeking Community Living Supports.⁷

The Department witnesses testified that following the scheduled quality review assessment, it was determined, based on Petitioner's needs, that there was a need for an increase in the amount of HHS. The Department provided detailed notes of the assessment, and, furthermore, indicated Petitioner himself indicated an increased need due to "disease progression".

The Petitioner now disputes the findings of the assessment and argued an after-the-fact time study corroborates his claims for a reduction. The time study itself, however, was conducted following the assessment, and furthermore, was not provided to the Department for review until the day of the hearing. Consequently, the time study itself is insufficient to show a reduced need and carries very little weight for purposes of this proceeding.

The Petitioner also argued the Petitioner's support team never received notice of the assessment, and therefore, the Petitioner's rights were violated. The Petitioner, however, failed to present any law, rule, or policy that indicates the Department was required to do more than provide notice to Petitioner.⁸ And the Petitioner in this case, never disputed receiving notice of the assessment. At that point, if the Petitioner had an

⁷ Adult Services Manual 125, February 1, 2022, pp 1-2.

⁸ "An appellant may not merely announce a position then leave it to this Court to discover and rationalize the basis for the appellant's claims; nor may an appellant give an issue only cursory treatment with little or no citation of authority." *Chessman v Williams*, 311 Mich App 147, 161; 874 NW2d 385 (2015).

interest in having additional supports available at the assessment, it would be on Petitioner to provide the appropriate notice to those individuals.

At this point, all we have is the Petitioner's testimony regarding what transpired at the assessment and the testimony of both the Adult Services Worker attending the assessment, as well as the testimony of the Registered Nurse conducting the assessment. That being said, corroborating the Department witness testimony are the notes that were prepared either contemporaneous to the assessment or shortly thereafter. While the Petitioner did identify an error in the notes, the error was a minor error; and nothing of significant substance that would change one's opinion of the notes as a whole.

Lastly, of all the evidence presented, the most troubling portion is the email that was sent by Petitioner's mother to the Department following the issuance of the approval letter. The email makes it clear that one of the most concerning issues of the assessment is that the increase in HHS benefits will have a negative effect on Petitioner's CLS due to a decrease in value. This provides a possible motive as to why the Petitioner would now wish to change any statements that were provided during the assessment in order to get a reduction in benefits. And while the email does indicate a request for a new assessment and indicates the mother is very efficient at providing care, the Petitioner had a different caregiver at the time of the assessment who provided the Department with information that led to the decision to increase HHS.

Consequently, and based on the evidence presented, I find the Petitioner to have failed in meeting their burden to show the Department improperly determined Petitioner's HHS allocation.

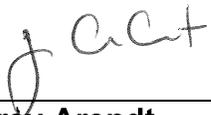
DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, finds that, based on the available information, the Department properly determined Petitioner's HHS allocation.

IT IS THEREFORE ORDERED THAT:

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

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:

Agency Representative

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