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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
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: March 7, 2024
MOAHR Docket No.: 24-000271
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 Petitioner's request for a hearing.

After due notice, a telephone hearing was held on February 15, 2024. Petitioner [REDACTED] (Petitioner) appeared and testified on his own behalf. [REDACTED] Petitioner's caregiver, also testified as a witness for Petitioner. John Lambert, Appeals Review Officer, represented the Respondent Department of Health and Human Services (DHHS or Department). Anthony Clark, Adult Services Supervisor, testified as a witness for the Department.

During the hearing, the Department submitted an evidence packet that was admitted into the record without objection as Exhibit A, pages 1-63. Petitioner did not submit any exhibits.

ISSUE

Did the Department properly reduce Petitioner's 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 has been approved for HHS through the Department since August of 2018. (Exhibit A, pages 10-12).

2. Prior to the action at issue in this case, Petitioner was approved for 52 hours and 27 minutes of HHS per month, with 10 minutes per day, 7 days a week approved for assistance with bathing; 10 minutes per day, 3 days a week approved for assistance with grooming; 14 minutes per day, 4 days per week approved for assistance with housework; 14 minutes per day, 2 days per week approved for assistance with laundry; 1 hour per day, 2 days per week approved for assistance with travel for laundry; 40 minutes per day, 7 days per week approved for assistance with meal preparation; 14 minutes per day, 2 days per week approved for assistance with shopping; and 1 hour per day, 2 days per week approved for assistance with travel for shopping. (Exhibit A, page 13; Testimony of Adult Services Supervisor).
3. On October 30, 2023, the Adult Services Worker (ASW) assigned to Petitioner's case conducted a review with Petitioner in Petitioner's home. (Exhibit A, page 19).
4. During that review, Petitioner reported that his home help caregiver assists him five (5) days per week. (Exhibit A, page 19; Testimony of Petitioner).
5. Petitioner and the ASW also discussed where the caregiver shops for Petitioner and does his laundry. (Exhibit A, page 19; Testimony of Petitioner).
6. That same day, the Department sent Petitioner written notice that his HHS were going to being reduced. (Exhibit A, page 20).
7. Overall, Petitioner's HHS were to be reduced to 33 hours and 6 minutes per month. (Exhibit A, pages 14, 20).
8. Specific reductions were to assistance with bathing, to 10 minutes per day, 5 days per week; travel for laundry, to 10 minutes per day, 2 days per week; meal preparation, to 40 minutes per day, 5 days per week; and travel for shopping, to 25 minutes per day, 2 days per week. (Exhibit A, pages 13-14; Testimony of Adult Services Supervisor).
9. On January 18, 2024, the Michigan Office of Administrative Hearings and Rules (MOAHR) received the request for hearing filed in this matter regarding the reduction in Petitioner's HHS. (Exhibit A, pages 8-9).

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) 120 (5-1-2023) addresses the issue of what services are included in HHS and how such services are assessed. For example, ASM 120 states in part:

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 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.

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 IADLs 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 in MiAIMS. 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 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 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 at 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 tab within MiAIMS for each task. ASW's should modify how much time is needed based on the client's documented need.

MiAIMS includes a functional assessment time based on the ASW's assessment of the client's needs. MiAIMS also has a provider time and task based on the client's choice of activities and frequency to be performed by their chosen provider. The client functional assessment summary may be different from the provider time and task due to client choice or provider availability. The client's functional assessment summary indicates the maximum approved time based on the client's assessed need. Upon client request, the provider authorization may exceed the provider time and task, but may not exceed the client functional assessment. The ASW should document the reason for the variance from the provider time and task in the payment rationale box in MiAIMS.

Note: This allows flexibility for client choice while also assuring the basic needs of the client are being met. The caregiver must correctly document which tasks they are performing.

Example: Miss Smith has been assessed to need bathing assistance. However, she does not want her caregiver or agency provider to assist her with bathing. Miss Smith continues to do bathing on her own with difficulty. Miss Smith's functional assessment summary will have bathing allocated, but bathing will not be included in her provider's time and task.

An assessment of need, at a ranking of 3 or greater, does not automatically guarantee the suggested allotted time allowed by the RTS. **The ASW must assess each task according to the average time and frequency required for its completion.**

Example: A client needs assistance with cutting up food. The ASW would only pay for the average time required to cut the food.

Example: On a good day, it takes the caregiver or agency provider 10 minutes to dress Miss Jones. On a bad day, when Miss Jones is in a lot of pain, it can take the caregiver or agency provider 20 minutes to assist Miss Jones with dressing. The average daily time needed is 15 minutes. Therefore 15 minutes is what is entered in the time and task.

Example: Sally is assessed needing an average of 20 minutes a day for bathing and reports frequency of 4 days a week. However, one day during the week, Sally was not feeling well and decided to skip her bath. The next day the caregiver assisted Sally with bathing in the morning and in the evening, due to illness. Both bathing activities totaled 20 minutes each. The frequency shows the caregiver only completed three days of bathing due to documentation restrictions. However, the caregiver assisted in four bathing occurrences during that week with one day having completed two baths.

Note: It is important to understand that each day a client may have different needs due to their health restrictions. Therefore, the average time and frequency may vary due to changes in the client's needs.

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.

Note: This does not include situations where others live in adjoining apartments/flats or in a separate home on shared property and there is no shared, common living area.

In shared living arrangements, where it can be **clearly** documented that IADLs for the eligible client are completed separately from others in the home, hours for IADLs do not need to be prorated.

Example:

- Client has special dietary needs and meals are prepared separately.
- Client is incontinent of bowel and/or bladder and laundry is completed separately.
- Client's shopping is completed separately due to special dietary needs and food is purchased from specialty stores, etc.
- Caregiver does not live with the client and completes the client's laundry, shopping, and meal preparation separately from the client's roommate. The client's roommate does their own laundry, shopping, and meal preparation, therefore, these IADLs are not prorated because the client is the only person benefiting from the service. However, housework is prorated as it is a common living area.

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 2-7

Here, as discussed above, the Department reduced Petitioner's HHS overall by decreasing assistance with bathing, travel for laundry, meal preparation, and travel for shopping.

In appealing that decision, Petitioner bears the burden of proving by a preponderance of the evidence that the Department erred in reducing his HHS. Moreover, the undersigned Administrative Law Judge is limited to reviewing the Department's decision in light of the information that was available at the time the decision was made.

Given the record and applicable policies in this case, Petitioner has not met his burden of proof; and the Department's decision must therefore be affirmed.

Assistance with two of the reduced tasks, *i.e.*, bathing and meal preparation, was based solely on a reduction in the number of days per week approved for assistance, from 7 days per week to 5 days per week, and it is undisputed that, as displayed in the home help worker's logs and confirmed by testimony, Petitioner's home help worker only works 5 days per week.

Petitioner and his provider may now take issue with the minutes per day of assistance that was approved, but that testimony is not persuasive. The minutes per day authorized for assistance with bathing and meal preparation has not changed and it was not an issue before. Additionally, much of Petitioner's testimony was based on new health issues, including a stroke, that occurred after the decision at issue in this case was made, while the undersigned Administrative Law Judge is limited to reviewing the Department's decision in light of the information that was available at the time the decision was made.

Moreover, with respect to the other two reduced tasks, *i.e.*, travel for laundry and shopping, the testimony of Petitioner that he must travel an hour round-trip each time is likewise unpersuasive given the ASW's contemporaneous notes regarding what was reported; Petitioner's inconsistencies regarding where they go and what he told the ASW; and Petitioner's apparent conflation of travel for shopping with shopping itself.

To the extent that Petitioner's circumstances have now changed, and he requires more assistance than before, Petitioner can always request that his HHS be increased again in the future with that updated information. 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.

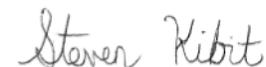
DECISION AND ORDER

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

IT IS, THEREFORE, ORDERED that:

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

SK/pe



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:

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Petitioner

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