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GOVERNOR

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

MARLON I. BROWN, DPA
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: March 15, 2024
MOAHR Docket No.: 24-000716
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 February 22, 2024. Petitioner appeared and testified on his own behalf. Mary Carrier, Appeals Review Officer, represented the Respondent Department of Health and Human Services (DHHS or Department). Sharon Clark, 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 without objection as Exhibit A, pages 1-42. Petitioner did not submit any proposed 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 has been diagnosed with chronic back pain, anxiety, and insomnia. (Exhibit A, pages 13-14).
2. On November 30, 2023, Petitioner was referred for HHS through the Department. (Exhibit A, page 13).

3. As part of his application for HHS, Petitioner submitted a Medical Needs statement signed by his doctor and in which his doctor certified that Petitioner had a medical need for assistance with at least one of the personal care activities listed on the form. (Exhibit A, page 14).
4. The doctor also specifically put check marks next to all listed Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADLs). (Exhibit A, page 14).
5. The doctor further indicated in other sections that Petitioner was non-ambulatory, and that Petitioner used a cane. (Exhibit A, page 14).
6. On January 8, 2024, an Adult Services Worker (ASW) completed a comprehensive assessment with Petitioner. (Exhibit A, page 16).
7. During the assessment, Petitioner used a walker while ambulating and reported that it was his. (Testimony of ASW).
8. However, the ASW did not ask Petitioner specifically about his need for assistance with mobility or any other ADL. (Testimony of Petitioner).
9. The ASW did observe that Petitioner was fully dressed, and she assumed that he was about to take his kids to school. (Exhibit A, page 16; Testimony of ASW).
10. However, she did not ask Petitioner if he was actually going to do so, and there was another adult in the home at the time. (Testimony of ASW; Testimony of Petitioner).
11. In her subsequent note regarding the home visit, the ASW further wrote:

This client did not have a need for hands on services. This writer did not observe any handicaps to the client's upper or lower body to prevent him from dressing, toileting as he does not have incontinence issues, eating as there were deformities to the upper and lower body, grooming, transferring, and the client stated he does not use stairs in his home. The client may require some assistance with cooking but there was nothing noted as to why he could not complete this task or any other non-hands-on task himself.

Exhibit A, page 16

12. On January 9, 2024, the Department sent Petitioner written notice that his request for HHS was denied because he did not have a need for assistance with any ADLs and was therefore ineligible for services. (Exhibit A, pages 7-8).

13. On January 31, 2024, 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 7-12).

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 (5-1-2023) address the issue of what services were included in HHS and how such services are assessed. 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* 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 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 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

Regarding the Functional Assessment Definitions and Ranks discussed above, ASM 121 (8-1-2018) further states in part:

ACTIVITIES OF DAILY LIVING

Use the following information as guidance when completing a comprehensive assessment.

Eating - helping with the use of utensils, cup/glass, getting food/drink to mouth, cutting up/manipulating food on plate, swallowing foods and liquids, cleaning face and hands after a meal.

1. No assistance required.

2. Verbal assistance or prompting required. Client must be prompted or reminded to eat.
3. Minimal hands-on assistance or assistive technology needed. Help with cutting up food or pushing food within reach; help with applying assistive devices. The constant presence of another person is not required.
4. Moderate hands-on assistance required. Client has some ability to feed self but is unable to hold utensils, cup, or glass.
5. Totally dependent on others in all areas of eating.

Toileting - helping on/off the toilet, commode or bedpan; emptying commode, bed pan or urinal, managing clothing, wiping and cleaning body after toileting, cleaning ostomy and/or catheter tubes/receptacles, applying diapers and disposable pads. May also include catheter, ostomy or bowel programs.

1. No assistance required.
2. Verbal direction, prompting or reminding is required.
3. Minimal hands-on assistance or assistive technology needed with some activities. The constant presence of another person while toileting is not necessary.
4. The client does not carry out most activities without human assistance.
5. Totally dependent on others in all areas of toileting.

Bathing - helping with cleaning the body or parts of the body using a tub, shower or sponge bath; including getting a basin of water, managing faucets, soaping, rinsing and drying. helping shampoo hair.

1. No assistance required.
2. Bathes self with direction or intermittent monitoring. May need reminding to maintain personal hygiene.
3. Minimal hands-on assistance or assistive technology required to carry out task. Generally, bathes self but needs some assistance with cleaning hard to reach areas; getting in/out of tub/shower. Client can sponge bath, but another

person must bring water, soap, towel. Client relies on a bath or transfer bench when bathing. The constant presence of another is not required.

4. Requires direct hand- on assistance with most aspects of bathing. Could be at risk if unassisted.

5. Totally dependent on others in all areas of grooming.

Grooming - Maintaining personal hygiene and a neat appearance; including the combing/brushing of hair; brushing/cleaning teeth, shaving, fingernail and toenail care.

1. No assistance required.

2. Bathes self with direction or intermittent monitoring. May need reminding to maintain personal hygiene.

3. Minimal hands-on assistance required. Grooms self but needs some assistance with activities of personal hygiene.

4. Requires direct hands-on assistance with most aspects of grooming. Could be at risk if unassisted.

5. Totally dependent on others in all areas of grooming.

Dressing - Putting on and taking off garments; fastening and unfastening garments/undergarments, assisting with special devices such as back or leg braces, elastic stockings/garments and artificial limbs or splints.

1. No assistance required.

2. Client can dress self but requires reminding or direction in clothing selection.

3. Minimal hands-on assistance or assistive technology required. Client unable to dress self completely (for example, tying shoes, zipping, buttoning) without the help of another person or assistive device.

4. Requires direct hands on assistance with most aspects of dressing. Without assistance would be inappropriately or inadequately dressed.

5. Totally dependent on others in all areas of dressing.

Transferring - Moving from one sitting or lying position to another. Assistance from the bed or wheelchair to the sofa, coming to a standing position and/or repositioning to prevent skin breakdown.

1. No assistance required.
2. Client can transfer but requires encouragement or direction.
3. Minimal hands-on assistance needed from another person for routine boosts or positioning. Client unable to routinely transfer without the help of another or assistive technology such as a lift chair.
4. Requires direct hands-on assistance with most aspects of transferring. Could be at risk if unassisted.
5. Totally dependent on others for all transfers. Must be lifted or mechanically transferred.

Mobility - Walking or moving around inside the living area, changing locations in a room, assistance with stairs or maneuvering around pets, or obstacles including uneven floors.

1. No assistance required even though the client may experience some difficulty or discomfort. Completion of the task poses no risk to safety.
2. Client can move independently with only reminding or encouragement. For example, needs reminding to lock a brace, unlock a wheelchair or to use a cane.
3. Minimal hands-on assistance required for specific maneuvers with a wheelchair, negotiating stairs or moving on certain surfaces. Without the use of a walker or pronged cane, client would need physical assistance.
4. Requires hands-on assistance from another person with most aspects of mobility. Could be at risk if unassisted.
5. Totally dependent on other for all mobility. Must be carried, lifted or pushed in a wheelchair or gurney always.

As described in the above policies, 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.

Here, the Department denied Petitioner's request for HHS on the basis that he did not have a need for assistance with any ADLs at a level 3 or greater on the functional scale as required.

In appealing that decision, Petitioner bears the burden of proving by a preponderance of the evidence that the Department erred in denying his 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 met that burden of proof and the Department's decision must therefore be reversed.

Petitioner credibly testified that, as noted by his doctor on the medical needs form, Petitioner uses adaptive equipment for mobility and that he requires hands-on assistance with multiple ADLs, both of which could make him eligible for HHS. Petitioner also credibly testified that the ASW did not ask him about specific tasks during the assessment and the home visit was very brief.

Moreover, while the ASW's testimony contradicts Petitioner's testimony, the undersigned Administrative Law Judge does not find her credible.

For example, the ASW's actual note regarding the home visit is consistent with what Petitioner said regarding the lack of questions. The ASW testified that she asked Petitioner about each specific ADL, but her note instead only reflects that her findings on the ADLs were based on how Petitioner looked and what she assumed he was doing or able to do, with no indication that she even asked Petitioner about her needs.

Similarly, while it is undisputed that, as testified by the ASW, Petitioner was fully dressed at the time of the visit, the ASW's reliance on that single fact in making her decision is an error. The ASW testified that she assumed Petitioner was dressed because he was going to take his kids to school, and that he did not need assistance with personal care if he was able to do that. However, that assumption is completely groundless, especially given that there is another adult in the home who could have been taking the kids to school, and the ASW never asked Petitioner about it.

Additionally, the note regarding the home visit completely failed to address Petitioner's mobility needs. There was no indication that, as now undisputed by the parties, Petitioner was using a walker during the assessment and reported that it was his. Nor was there anything regarding why the ASW did not believe Petitioner needed assistance with mobility despite Petitioner's report and the medical needs form. At best, the ASW testified at the hearing that she did not believe Petitioner because she could not locate the medical provider who completed the medical needs form, despite both an

NPI number and telephone number being provided, but that testimony is unsupported and the ASW's note provided she made her decision at the home visit itself.

Accordingly, given Petitioner's credible testimony and the incomplete or inaccurate assessment completed by the Department, Petitioner has met his burden of proving that the Department erred; the decision to deny Petitioner's request for HHS must be reversed; and Petitioner's request for services should be reassessed.

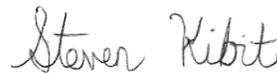
DECISION AND ORDER

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

IT IS, THEREFORE, ORDERED that:

The Department's decision is **REVERSED**, and it must initiate a reassessment of Petitioner's request for HHS.

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 15th day of March 2024.

S. James

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