



GRETCHEN WHITMER
GOVERNOR

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

MARLON I. BROWN, DPA
DIRECTOR

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[REDACTED]
[REDACTED] MI [REDACTED]

Date Mailed: April 8, 2024
MOAHR Docket No.: 24-002432
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 April 4, 2024. [REDACTED] Petitioner's son, appeared and testified on Petitioner's behalf. Petitioner also testified as a witness on her own behalf. Leigha Klaver, Appeals Review Officer, represented the Respondent Department of Health and Human Services (DHHS or Department). Kelly Robertson, 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 1-35. 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. On January 31, 2024, Petitioner was referred for HHS through the Department. (Exhibit A, page 10).
2. As part of her application for HHS, Petitioner indicated that she lived with her spouse, and that he was neither disabled nor working. (Exhibit A, page 13).
3. On February 8, 2024, the Department sent Petitioner written notice stating that Petitioner's request was denied because HHS cannot be authorized

when there is a responsible relative able and available to provide care, and Petitioner's spouse is able and available to assist her in this case. (Exhibit A, page 14).

4. On March 11, 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 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) 101 (4-1-2018) addresses 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.

* * *

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

Additionally, 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

Here, the Department denied Petitioner's request for HHS pursuant to the above policies and on the basis that Petitioner had a responsible relative available and able to provide any necessary services.

In appealing that decision, Petitioner bears the burden of proving by a preponderance of the evidence that the Department erred in denying her 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 failed to meet that burden of proof and the Department's decision must therefore be affirmed.

It is undisputed in this case that Petitioner is married and there is nothing in the record to suggest that her husband is physically unable or unavailable to provide the necessary care, with Petitioner's application expressly stating that Petitioner's husband is not disabled or working.

At most, Petitioner testified that, while he is not disabled, her husband is unable to care for her because he will resent her, he needs to take care of himself, and he has physical limitations. However, the above policies provide that any inability to provide care must

be documented and verified by a medical professional, and no such documentation was provided here. Moreover, while the undersigned Administrative Law Judge appreciates that Petitioner did not know the applicable policy or what she has to document, he is limited to reviewing the Department's decision in light of the information it had at the time it made the decision and, based on the record here, that decision was clearly proper.

To the extent Petitioner has additional information to report regarding her circumstances or need for HHS, then she can always request HHS again in the future with that 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 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 8th day of April 2024.

S. James

S. James
**Michigan Office of Administrative
Hearings and Rules**

Via Electronic Mail:

Agency Representative
Leigha Klaver
MDHHS Appeals Section
P.O. Box 30807
Lansing, MI 48909
Klaverl@michigan.gov

DHHS Department Contact
Michelle Martin
MDHHS
Lansing, MI 48933
**MDHHS-Home-Help-
Policy@michigan.gov**

DHHS Location Contact
Garilee Janofski
Gratiot County DHHS
Ithaca, MI 48847
**MDHHS-Gratiot-
Hearings@michigan.gov**

DHHS Department Representative
Mary Carrier
MDHHS Appeals Section
Lansing, MI 48909
MDHHS-Appeals@michigan.gov

Via First Class Mail:

Petitioner

[REDACTED]
MI [REDACTED]

Authorized Hearing Representative

[REDACTED]
MI [REDACTED]