



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

MARLON I. BROWN, DPA
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: October 15, 2024
MOAHR Docket No.: 24-009410
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jeffrey Kemm

DECISION AND ORDER

On August 26, 2024, Petitioner [REDACTED] requested a hearing to dispute Medicaid services. As a result, a hearing was scheduled to be held on October 9, 2024. Medicaid services hearings are held pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250; 42 CFR 438.400 to 438.424; and Mich Admin Code, R 792.11002.

The parties appeared for the scheduled hearing. Petitioner appeared and represented himself. Petitioner's caregiver and authorized hearing representative, [REDACTED] appeared with Petitioner. Respondent Michigan Department of Health and Human Services (Department) had Appeals Review Officer Lana Karadsheh appear as its representative. Adult Services Specialist Sharon Clark and Home Help Supervisor Chrystyna Head appeared as the Department's witnesses. Neither party had any additional witnesses.

Sworn testimony was taken from both parties, and one exhibit was admitted into evidence. A 79-page packet of documents provided by the Department was admitted into evidence as Exhibit A.

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 an HHS recipient.
2. Petitioner requires hands-on assistance due to the disabling effects of seizures that he has. Petitioner's seizures vary in frequency and intensity, and Petitioner's seizures have been decreasing in frequency and/or intensity over time.
3. On August 5, 2024, an adult services worker met with Petitioner at his home to complete a periodic assessment of his need for assistance. Petitioner was present with his caregiver, [REDACTED]
4. During the assessment, the adult services worker asked Petitioner about his need for assistance. The adult services worker went through each activity of daily living (ADL) and each instrumental activity of daily living (IADL). The adult services worker asked Petitioner about his need for assistance with each activity, and the adult services worker documented Petitioner's needs. The adult services worker also spoke with Petitioner's caregiver. The adult services worker asked Petitioner's caregiver if Petitioner used any adaptive equipment, and Petitioner's caregiver answered "no." Following the assessment, the adult services worker determined that Petitioner's HHS would be reduced because Petitioner's need for services had changed.
5. Prior to the August 5, 2024, assessment, Petitioner had been approved for 64 hours and 21 minutes of HHS per month. This consisted of the following time and task:
 - a. Bathing: 18 minutes per day for 7 days per week. This was equal to 9 hours and 2 minutes per month.
 - b. Dressing: 16 minutes per day for 7 days per week. This was equal to 8 hours and 2 minutes per month.
 - c. Grooming: 8 minutes per day for 5 days per week. This was equal to 2 hours and 52 minutes per month.
 - d. Mobility: 16 minutes per day for 7 days per week. This was equal to 8 hours and 2 minutes per month.
 - e. Toileting: 26 minutes per day for 7 days per week. This was equal to 13 hours and 3 minutes per month.
 - f. Transferring: 6 minutes per day for 4 days per week. This was equal to 1 hour and 43 minutes per month.

- g. Housework: 8 minutes per day for 5 days per week. This was equal to 2 hours and 52 minutes per month.
 - h. Laundry: 25 minutes per day for 1 day per week. This was equal to 1 hour and 47 minutes per month.
 - i. Travel for laundry: 10 minutes per day for 1 day per week. This was equal to 43 minutes per month.
 - j. Medication: 2 minutes per day for 7 days per week. This was equal to 1 hour per month.
 - k. Meal preparation: 24 minutes per day for 7 days per week. This was equal to 12 hours and 2 minutes per month.
 - l. Shopping for food/meds: 30 minutes per day for 1 day per week. This was equal to 2 hours and 9 minutes per month.
 - m. Travel for shopping: 15 minutes per day for 1 day per week. This was equal to 1 hour and 4 minutes per month.
6. Following the August 5, 2024, assessment, the adult services worker decided to reduce or eliminate Petitioner's HHS for bathing, dressing, grooming, mobility, toileting, housework, laundry, and travel for laundry. The adult services worker decided to increase Petitioner's HHS for meal preparation and travel for shopping. The net effect of the adult services worker's changes was a reduction of 30 hours and 49 minutes per month.
7. After the August 5, 2024, assessment, Petitioner was approved for 33 hours and 32 minutes of HHS per month. This consisted of the following time and task:
- a. Bathing: 16 minutes per day for 4 days per week. This was equal to 4 hours and 35 minutes per month.
 - b. Dressing: 14 minutes per day for 5 days per week. This was equal to 5 hours and 1 minute per month.
 - c. Grooming: 8 minutes per day for 3 days per week. This was equal to 1 hour and 43 minutes per month.
 - d. Mobility: not approved.
 - e. Toileting: not approved.
 - f. Transferring: 6 minutes per day for 4 days per week. This was equal to 1 hour and 43 minutes per month.

- g. Housework: 6 minutes per day for 5 days per week. This was equal to 2 hours and 9 minutes per month.
 - h. Laundry: 7 minutes per day for 1 day per week. This was equal to 30 minutes per month.
 - i. Travel for laundry: not approved.
 - j. Medication: 2 minutes per day for 7 days per week. This was equal to 1 hour per month.
 - k. Meal preparation: 25 minutes per day for 7 days per week. This was equal to 12 hours and 32 minutes per month.
 - l. Shopping for food/meds: 30 minutes per day for 1 day per week. This was equal to 2 hours and 9 minutes per month.
 - m. Travel for shopping: 30 minutes per day for 1 day per week. This was equal to 2 hour and 9 minutes per month.
8. On August 6, 2024, the Department mailed a negative action notice to Petitioner to notify him that his HHS were going to be reduced to 33 hours and 32 minutes per month, effective August 20, 2024. The notice stated, "mobility, toileting removed as the client can complete and has an adaptive equipment to assist. Laundry time reduced for a shared household. Laundry travel time removed. Laundry is in the home. Travel time for shopping increased. Mealtime increased. Bathing rank reduced from 4 to 3 and days reduced 4 times weekly. Dressing rank reduced from 4 to 3 and days reduced to 5 days. Grooming days reduced to 3 times per week. All other tasks remain the same."
9. On August 20, 2024, Petitioner called a home help services supervisor to discuss his HHS reduction. The home help services supervisor went over Petitioner's need for services on the telephone, and the home help services supervisor determined that Petitioner's HHS should be increased.
10. Following the August 20, 2024, telephone assessment, the home help supervisor decided to increase or add Petitioner's HHS for mobility, toileting, housework, laundry, and shopping for food/meds. The net effect of the home help supervisor's changes was an increase of 14 hours and 33 minutes per month.
11. After the August 20, 2024, telephone assessment, Petitioner was approved for 48 hours and 5 minutes of HHS per month. This consisted of the following time and task:

- a. Bathing: 16 minutes per day for 4 days per week. This was equal to 4 hours and 35 minutes per month.
 - b. Dressing: 14 minutes per day for 5 days per week. This was equal to 5 hours and 1 minute per month.
 - c. Grooming: 8 minutes per day for 3 days per week. This was equal to 1 hour and 43 minutes per month.
 - d. Mobility: 14 minutes for 4 days per week. This was equal to 4 hours and 1 minute per month.
 - e. Toileting: 22 minutes per day for 4 days per week. This was equal to 6 hours and 18 minutes per month.
 - f. Transferring: 6 minutes per day for 4 days per week. This was equal to 1 hour and 43 minutes per month.
 - g. Housework: 6 minutes per day for 7 days per week. This was equal to 3 hours and 1 minute per month.
 - h. Laundry: 49 minutes per day for 1 day per week. This was equal to 3 hours and 31 minutes per month.
 - i. Travel for laundry: not approved.
 - j. Medication: 2 minutes per day for 7 days per week. This was equal to 1 hour per month.
 - k. Meal preparation: 25 minutes per day for 7 days per week. This was equal to 12 hours and 32 minutes per month.
 - l. Shopping for food/meds: 35 minutes per day for 1 day per week. This was equal to 2 hours and 30 minutes per month.
 - m. Travel for shopping: 30 minutes per day for 1 day per week. This was equal to 2 hour and 9 minutes per month.
12. On August 28, 2024, the Department mailed a services approval notice to Petitioner to notify him that his HHS were going to be increased to 48 hours and 5 minutes per month, effective August 19, 2024. The notice stated, "as a result of the information you provided, your Home Help Services monthly hours have increased to 48:05."
 13. Petitioner requested a hearing to dispute the Department's decision to reduce his HHS. Petitioner wanted to dispute the Department's determination because it

stated that it was due in part to the fact that Petitioner uses adaptive equipment. Petitioner asserted this was false because he does not use or own any adaptive equipment.

CONCLUSIONS OF LAW

The Medical Assistance Program (MA) 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 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 health professional and may be provided by individuals or by private or public agencies.

In order to be eligible for HHS, an individual must have a need for services, based on a comprehensive assessment indicating a need for hands-on assistance with at least one activity of daily living (ADL) or a need for complex care. ASM 120 (May 1, 2023), p. 3. Those activities known as ADL's are eating, toileting, bathing, grooming, dressing, transferring, and mobility. *Id.* at 2-3. Complex care includes care such as catheters, bowel programs, specialized skin care, suctioning, range of motion exercises, wound care, respiratory treatments, ventilators, and injections. *Id.* at 4-5.

The comprehensive assessment is the Department's primary tool for determining a client's need for services. *Id.* at 1. Although a medical professional may certify a client's need for services, it is the Department who determines whether there is a need for services through its comprehensive assessment. ASM 115 (May 1, 2023), p. 2. During the assessment, the Department documents a client's abilities and needs in order to determine the client's ability to perform activities. ASM 120 at 2.

The comprehensive assessment must be periodically updated. It must be updated as often as necessary, but minimally at the six-month review. *Id.* at 1. In this case, the Department completed a periodic review of Petitioner's comprehensive assessment on August 5, 2024, and the Department decreased Petitioner's HHS as a result. However, subsequently, Petitioner contacted the Department on August 20, 2024, to discuss the decrease, and the Department increased Petitioner's HHS as a result. The net effect of the August 5, 2024, review and the August 20, 2024, adjustment was still a decrease to Petitioner's HHS.

Prior to the August 5, 2024, assessment, Petitioner had been approved for 64 hours and 21 minutes of HHS per month. After the August 5, 2024, review and the August 20, 2024, adjustment, Petitioner was approved for 48 hours and 5 minutes of HHS per month. Thus, Petitioner's HHS were reduced 16 hours and 16 minutes per month. This was caused by a decrease in Petitioner's bathing, dressing, grooming, mobility, and toileting. Petitioner's housework, laundry, meal preparation, shopping for food/meds,

and travel for shopping increased. Petitioner's transferring and medication were not changed.

Petitioner's primary dispute was that the adult services worker reduced Petitioner's HHS in part due to the fact that Petitioner used adaptive equipment. Based on the evidence presented, this was the Department's error. There was no evidence to substantiate that Petitioner used adaptive equipment. To the contrary, Petitioner's caregiver specifically told the adult services worker that Petitioner did not use any adaptive equipment when the adult services worker visited Petitioner's home on August 5, 2024. Thus, the Department should not have reduced Petitioner's HHS due to the use of adaptive equipment. The Department stated in its negative action notice that it reduced Petitioner's mobility and toileting because Petitioner had adaptive equipment to assist. Since the Department reduced Petitioner's mobility and toileting due to adaptive equipment, and since Petitioner did not use adaptive equipment, the Department did not properly reduce Petitioner's mobility and toileting. However, this error was addressed by a home help services supervisor when Petitioner spoke with the home help services supervisor on August 20, 2024.

Prior to Petitioner's August 5, 2024, assessment, Petitioner had been approved for 8 hours and 2 minutes per month for mobility, and Petitioner had been approved for 13 hours and 3 minutes for toileting. After Petitioner's August 5, 2024, assessment, Petitioner was not approved for HHS for mobility and toileting. After Petitioner's August 20, 2024, conversation with a home help services supervisor, Petitioner was approved for 4 hours and 1 minute per month for mobility, and Petitioner was approved for 6 hours and 18 minutes per month for toileting. Thus, Petitioner's HHS for mobility and toileting were reinstated, albeit at decreased hours.

Petitioner did not present sufficient evidence to establish that the Department did not act in accordance with its policies and the applicable law. Although the Department's August 5, 2024, assessment was completed with an error, the Department corrected this error when it revised Petitioner's assessment on August 20, 2024. There was no evidence that the revised assessment did not properly document Petitioner's need for assistance. The Department reasonably concluded that Petitioner's need for assistance had decreased because Petitioner's seizures vary in frequency and intensity, and Petitioner's seizures have been decreasing in frequency and/or intensity over time. Thus, the Department reasonably determined that Petitioner's HHS should be decreased. Therefore, I must find that the Department properly reduced Petitioner's HHS.

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 ORDERED THAT the Department's decision is **AFFIRMED**.



JK/pe

Jeffrey Kemm
Administrative Law Judge

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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Via First Class Mail:

Petitioner and Authorized Hearing Representative

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