



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED] MI [REDACTED]

Date Mailed: March 9, 2020
MOAHR Docket No.: 19-012778
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Colleen Lack

DECISION AND ORDER

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 *et seq*; 42 CFR 438.400 *et seq*; and Mich Admin Code, R 792.11002.

After due notice, a hearing was held on January 29, 2020. [REDACTED] the Petitioner, appeared on her own behalf. Florence Scott-Emuakpor, Appeals Review Officer, represented the Department of Health and Human Services (Department). Shundrice Brown, Adult Services Worker (ASW), and Nancy Brugger, Adult Services Supervisor, appeared as witnesses for the Department.

During the hearing proceeding, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-31.

ISSUE

Did the Department properly terminate Petitioner's Home Help Services (HHS) case?

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 has had an open HHS case since June 3, 2010. (Exhibit A, p. 7)
2. Petitioner was receiving 45 hours and 39 minutes of HHS with a total monthly care cost of \$431.41 for assistance with bathing, grooming, mobility, housework, laundry, meal preparation, shopping, and travel for shopping. (Exhibit A, pp. 12-13)

3. On October 31, 2019, the ASW sent a Home Visit Letter regarding a home visit scheduled for November 15, 2019. (Exhibit A, p. 9)
4. On November 9, 2019, the ASW saw Petitioner working at [REDACTED] (Exhibit A, p. 9; ASW Testimony)
5. On November 12, 2019, an Advance Negative Action Notice was issued to Petitioner stating the HHS case would be terminated effective November 26, 2019, based on observing Petitioner working the morning shift at [REDACTED] Petitioner was capable of meeting her activities of daily living and instrumental activities of daily living and was no longer eligible for HHS. (Exhibit A, p. 8)
6. Petitioner's Request for Hearing was received by the Michigan Office of Administrative Hearings and Rules (MOAHR) on December 12, 2019. (Exhibit A, p. 6)

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.

Adult Services Manual (ASM) 101, addresses HHS payments:

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.

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 IADL's 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 bath himself without the hands-on assistance of another. The adult services worker 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. This list is not all inclusive.

Complex Care

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. 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 or feeding assistance.
- Catheters or leg bags.
- Colostomy care.
- Bowel program.
- Suctioning.
- Specialized skin care.
- Range of motion exercises.
- Dialysis (In-home).
- Wound care.
- Respiratory treatment.

- Ventilators.
- Injections.

Adult Services Manual (ASM) 101,
April 1, 2018, pp. 1-3 of 5

Adult Services Manual (ASM) 165 addresses overpayments, including client errors:

The Michigan Department of Health and Human Services (MDHHS) is responsible for determining accurate payment for services. When payments are made in an amount greater than allowed under department policy an overpayment occurs. When an overpayment is discovered, corrective actions must be taken to prevent further overpayment and to recoup the overpayment amount.

Client Errors

A client error occurs when the client receives additional benefits than they were entitled to because the client provided incorrect or incomplete information to MDHHS.

Adult Services Manual (ASM) 165,
April 1, 2019, p. 1 of 8

Adult Services Manual (ASM) 170 addresses case closure, including termination of HHS payments:

Termination of Home Help Payments

Home Help services payments may be terminated and closing procedures initiated, in any of the following circumstances:

- The client fails to meet any of the eligibility requirements.
- Medicaid eligible.
- Medical professional does not certify a need for services on the DHS-54A, Medical Needs, form.
- Assessment determines client no longer requires home help services.

- The client no longer wishes to receive Home Help services.
- The client is receiving services from another program and this would result in a duplication of services.

Adult Services Manual (ASM) 170,
February 1, 2019, p. 1 of 3

Petitioner was receiving 45 hours and 39 minutes of HHS with a total monthly care cost of \$431.41 for assistance with bathing, grooming, mobility, housework, laundry, meal preparation, shopping, and travel for shopping. (Exhibit A, pp. 12-13)

On October 31, 2019, the ASW sent a Home Visit Letter regarding a home visit scheduled for November 15, 2019. (Exhibit A, p. 9)

For the weekend of November 9, 2019, the ASW was the on-call Adult Protective Services (APS) Specialist. After having completed a morning visit on November 9, 2019, the ASW stopped at [REDACTED]. The ASW went through the drive thru, but the order was incomplete so she went inside. The ASW saw Petitioner inside working at the [REDACTED]. The ASW spoke with Petitioner briefly. In part, Petitioner indicated she was not sure how much longer she would be able to keep working. The ASW told Petitioner this was probably not the best place to talk and indicated they would need to talk soon. The ASW observed Petitioner walking and standing independently. (Exhibit A, p. 9; ASW Testimony) On November 12, 2019, the ASW verified with Petitioner's Medicaid Eligibility Specialist that Petitioner had reported employment with [REDACTED] beginning in September 2019 and that Petitioner had worked for [REDACTED] in June 2019. (Exhibit A, p. 8; ASW Testimony)

Petitioner testified that as far as working at [REDACTED] she was trying to see if she could do things on her own. It is hard when you are used to doing things and then you just have to sit back. Petitioner's doctor told her she was setting herself up for failure. Petitioner had two surgeries behind that and has to have a third surgery. Regarding working for [REDACTED] Petitioner testified that she worked for them but she did not really work for them. Petitioner was just sitting with a man and talking with him. Regarding [REDACTED] Petitioner came out of the bathroom and saw the ASW there. She spoke with the ASW, went around behind the counter, and was just standing there trying to talk to the ASW. The ASW told Petitioner this was not a good place to talk. Petitioner testified that she messed herself up doing the things she tried to do and she is no longer able to work. Petitioner indicated she worked about 2 hours two days per month for Arcadia, for about a month or a month and a half. Petitioner indicated she also worked part time at [REDACTED] as a cashier from about September until December 2019. Petitioner was trying to see if she could work to take care of herself, then she was going to call HHS and let them know she no longer needed home care. However, Petitioner found out the hard way that she cannot. Petitioner fell in her home and broke two of her toes when she tripped walking through her house. Petitioner stated she still needed help with activities like bathing and grooming when she was working at [REDACTED]

Petitioner also stated that she was having trouble walking, though she would leave her cane in the car. Petitioner never brought the cane into [REDACTED] Petitioner would lean against a wall when she was not taking an order. Petitioner also stated that shortly after the ASW saw her at [REDACTED] she was sent home. Petitioner has problems around chemicals and stuff. Petitioner came out of the bathroom and another employee was cleaning the floor. Petitioner had to sit down as she was having trouble breathing, then she was sent home. (Petitioner Testimony) Petitioner's hearing request indicates she was going to have two major surgeries, the first was scheduled for December 11, 2019. The date of the second would be determined after healing from the first surgery. (Exhibit A, p. 6)

Overall, the available evidence supports the Department's determination to terminate Petitioner's HHS case. Ideally the ASW should have completed another comprehensive assessment before terminating the case, in accordance with the ASM 170 policy. However, the ASM 165 policy states that when an overpayment is discovered, corrective actions must be taken to prevent further overpayment. The ASW observed Petitioner working at [REDACTED] indicating she did not need the assistance she was receiving through the HHS program. For example, Petitioner's HHS authorization included hours for hands on assistance with mobility, yet the ASW observed Petitioner walking and standing independently while working at [REDACTED] (Exhibit A, p. 13; ASW Testimony) Petitioner also testified that she never brought her cane into work at [REDACTED] (Petitioner Testimony) Further, the ASW also received information that Petitioner had worked for a home care agency, albeit briefly. (ASW Testimony) This is not consistent with Petitioner having a need for HHS.

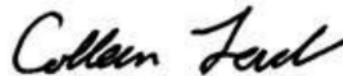
DECISION AND ORDER

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

IT IS, THEREFORE, ORDERED that:

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

CL/dh



Colleen Lack
Administrative Law Judge
for Robert Gordon, 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

DHHS -Dept Contact

Michelle Martin
Capitol Commons
6th Floor
Lansing, MI 48909

DHHS Department Rep.

M. Carrier
Appeals Section
PO Box 30807
Lansing, MI 48933

Agency Representative

Florence Scott-Emuakpor
222 N. Washington Square
Suite 100
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DHHS-Location Contact

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2700 Baker St
Muskegon Heights, MI 49444

Petitioner

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