



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

**CARMEN RAFAELA
178 HUBBARD STREET
BATTLE CREEK, MI 49037**

Date Mailed: March 10, 2020
MOAHR Docket No.: 19-012882
Agency No.: 03548453
Petitioner: Carmen Rafaela

ADMINISTRATIVE LAW JUDGE: Jeffrey Kemm

DECISION AND ORDER

Upon the Petitioner's December 16, 2019, request for a hearing, this matter is before the undersigned Administrative Law Judge 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. After due notice, a hearing was held in person in Battle Creek, Michigan, on March 10, 2020.

Petitioner, Carmen Rafaela, appeared with her witnesses: Michael Kelly, Deja Wilson, Natasha Atchison, and Walter McClinton. Respondent, Department of Health and Human Services (Department), had Allison Pool, Appeals Review Officer, appear as its representative. The Department had three witnesses: Tracie VanMiddlesworth, Adult Services Worker, Benita Armstrong, Supervisor, and Kristina Cope, RN, Departmental Specialist. Neither party had any additional witnesses.

One exhibit was admitted into evidence during the hearing. A 60-page packet of documents provided by the Department was admitted collectively as the Department's Exhibit A.

ISSUE

Did the Department properly reduce Petitioner's Home Help Services (HHS) to \$997.98 per month effective December 26, 2019?

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 HHS recipient.
2. Petitioner lives in a home with her adult son. Petitioner's home has two bedrooms. Petitioner's son resides in the basement, and Petitioner resides on the main floor. Petitioner and her son share the common areas. Petitioner and her son sometimes prepare meals together.
3. On November 13, 2019, the Department mailed a notice to Petitioner to notify her that she was approved for \$1,417.45 per month for her HHS effective November 27, 2019.
4. On November 17, 2019, Petitioner requested additional HHS for skin care, range of motion exercises, and feeding assistance.
5. The Department reviewed Petitioner's request and determined that it should have a nurse evaluate Petitioner's needs to best determine what services she needs assistance with since she claimed she needed assistance with complex care.
6. On November 19, 2019, the Department contacted Petitioner and notified her that a nurse was going to evaluate her needs to determine what services she needs assistance with.
7. On December 5, 2019, the Department met with Petitioner face to face in her home to complete an assessment. Traci VanMiddlesworth, Adult Services Worker, and Kristina Cope, RN, Departmental Specialist, met with Petitioner on behalf of the Department. During the visit, Nurse Cope observed Petitioner and asked her questions about her need for assistance. Nurse Cope asked Petitioner to describe her need for assistance with each activity of daily living (ADL), instrumental activity of daily living (IADL), and complex care need. Nurse Cope documented Petitioner's responses.
8. Petitioner advised the Department that she requires assistance eating. Petitioner described that her provider places her food on a plate and cuts or smashes it up so that Petitioner can eat it. Petitioner stated that her provider spends approximately five minutes providing hands-on assistance each time she eats, and Petitioner stated that she eats three times per day.
9. Petitioner advised the Department that she does not require any assistance toileting.

10. Petitioner advised the Department that she requires assistance with bathing. Petitioner described that her provider helps her get into the shower, helps her get seated on her shower seat, makes sure she has everything she needs within reach, and helps her get out of the shower. Petitioner stated that her provider spends approximately ten minutes providing hands-on assistance each time she bathes, and Petitioner stated that she bathes once per day.
11. Petitioner advised the Department that she requires assistance with grooming. Petitioner described that her provider helps to brush her hair and clip her fingernails and toenails. Petitioner stated that her provider spends approximately five minutes per day providing hands-on assistance with grooming.
12. Petitioner advised the Department that she requires assistance with dressing. Petitioner described that her provider helps with dressing in the morning and the evening. Petitioner described that her provider helps her put on pants, put on shoes, put on socks, and fasten her bra. Petitioner stated that her provider spends approximately ten minutes per day providing hands-on assistance with dressing.
13. Petitioner advised the Department that she requires assistance with transferring. Petitioner described that her provider helps her get on and off the toilet. Petitioner stated that her provider spends approximately ten minutes per day providing hands-on assistance with transferring.
14. Petitioner advised the Department that she does not require assistance with mobility. Petitioner described that she uses a walker, cane, or scooter to get around her home without any hands-on assistance.
15. Petitioner advised the Department that her provider assists her with range of motion exercises. Petitioner described that her provider does exercises on her legs and feet every other day to help improve circulation. Petitioner stated that her provider spends approximately ten minutes each time he provides range of motion exercises.
16. Petitioner advised the Department that her provider assists her with specialized skin care. Petitioner described that her provider applies lotion and ointment to her body. Petitioner stated that her provider spends approximately ten minutes per day providing specialized skin care.

17. Petitioner advised the Department that she requires assistance with her medications. Petitioner described that she takes more than 20 medications daily and that she does a nebulizer treatment twice per day. Petitioner described that her provider sets up her medications, sets up her nebulizer, and observes her when she takes her medications. Petitioner stated that her provider spends approximately ten minutes per day providing hands-on assistance with her medications.
18. Petitioner advised the Department that she requires assistance with meal preparation, shopping, laundry, and housework.
19. In total, Petitioner asked for 95 hours and 62 minutes of HHS each month.
20. Based on the information provided by Petitioner at the assessment, the Department determined that Petitioner required 59 hours and 33 minutes of HHS each month. The Department granted Petitioner all the hours she requested except the hours requested for IADL's in excess of the amount allowed for a shared household.
21. On December 12, 2019, the Department mailed a negative action notice to Petitioner to notify her that her HHS were going to be reduced to \$997.98 effective December 26, 2019.
22. On December 16, 2019, Petitioner requested a hearing to dispute the Department's decision.

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.

The comprehensive assessment is the Department's primary tool for determining a client's need for services. ASM 120 (February 1, 2019), p. 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 (January 1, 2018), 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. When the Department determines that a client has a need for services,

the Department allocates time for each task indicating a need for hands-on assistance. *Id.* at 5. The assessment must be updated at least every six months. *Id.* at 1.

In this case, the Department met with Petitioner face to face in her home on December 5, 2019, to complete an assessment. During the assessment, the Department went through each ADL, IADL, and complex care need. The Department asked Petitioner to describe her need for services with each ADL, IADL, and complex care need. Based on Petitioner's descriptions, the Department granted Petitioner all the HHS hours she requested for hands-on assistance, with the exception of HHS hours for IADL's in excess of the maximum amount allowed for a shared household.

Petitioner disputed the proration of her IADL hours due to a shared household because Petitioner asserted that she and her son complete IADL's separately. When a HHS client lives with another adult, the Department must prorate the client's IADL's by one half unless it can be clearly documented that IADL's for the client are completed separately from others in the home. *Id.* at 6. Here, Petitioner lives with her adult son, and Petitioner did not clearly establish that her IADL's are completed separately from her son. Thus, the Department was required to prorate Petitioner's IADL's.

Based on the evidence presented at the hearing, Petitioner has not established that the Department did not act properly when it reduced her HHS to \$997.98 per month effective December 26, 2019.

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 to \$997.98 per month effective December 26, 2019.

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

JK/dh



Jeffrey Kemm
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

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