



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: February 13, 2020
MOAHR Docket No.: 19-013178
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Jeffrey Kemm

DECISION AND ORDER

Upon the Petitioner's December 26, 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 telephone hearing was held on February 11, 2020, from Lansing, Michigan.

Petitioner, ██████████, appeared with her representative, ██████████, and her provider, ██████████. Respondent, Department of Health and Human Services (Department), had Allison Pool, Appeals Review Officer, appear as its representative. The Department had one witness, Ashley Wells, Independent Living Specialist (ILS). Neither party had any additional witnesses.

Two exhibits were admitted into evidence during the hearing. A 47-page packet of documents provided by the Department was admitted collectively as the Department's Exhibit A, and a multiple-page packet of documents provided by Petitioner was admitted collectively as Petitioner's Exhibit 1.

ISSUE

Did the Department properly determine Petitioner's eligibility 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 HHS recipient.

2. Prior to August 28, 2019, Petitioner was authorized to receive \$ [REDACTED] per month for HHS.
3. On August 28, 2019, the Department met with Petitioner face-to-face in her home to complete an assessment. The Department observed Petitioner in a seated position on the couch. Petitioner leaned forward and backwards but otherwise remained seated. Petitioner had a back brace and leg brace on her body, and Petitioner had a wrist brace nearby. The Department asked Petitioner about her need for services, and Petitioner responded that she cannot do anything herself. Petitioner reported that she cannot lift her arms and she cannot use her hands. The Department advised Petitioner that she would need to provide a new medical needs form because the one it had received only indicated that Petitioner needed assistance with instrumental activities of daily living (IADL's).
4. On October 16, 2019, Petitioner's healthcare provider completed a new medical needs form. The new medical needs form certified that Petitioner had a medical need for assistance and indicated that Petitioner needs assistance with all activities of daily living (ADL's) and IADL's. Additionally, the form indicated that Petitioner needs assistance with range of motion exercises.
5. On October 22, 2019, the Department called Petitioner's healthcare provider to verify the authenticity of the medical needs form. Petitioner's healthcare provider verified that the form was authentic. The Department then discussed Petitioner's abilities and needs with Petitioner's healthcare provider.
6. The Department determined that Petitioner was eligible for the following services: bathing, dressing, grooming, housework, laundry, meal preparation, shopping for food and medications, and travel for shopping for food and medications. The Department determined that Petitioner was ineligible for all other services, and the Department determined that Petitioner's IADL's had to be prorated because she shared her household with her adult daughter.
7. The Department made its determination based in large part on the medical needs form and her conversation with Petitioner's healthcare provider.
8. On November 6, 2019, the Department mailed a services approval notice to Petitioner to notify Petitioner that she was approved for an increase in her HHS. The Department notified Petitioner that her new HHS approval was \$ [REDACTED] per month. The amount approved was equal to 4 hours and 1 minute per month for bathing, 3 hours and 31 minutes per month for dressing, 2 hours per month for grooming, 3 hours and 1 minute per month for housework, 3 hours and 31 minutes per month for laundry, 12 hours and 32 minutes per month for meal preparation, 2 hours and 30 minutes per month for shopping for food and medications, and 43 minutes per month for travel for shopping for food and medications.

9. On December 26, 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.

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 ADL or a need for complex care. ASM 120 (February 1, 2019), p. 3. Those activities known as ADL's are eating, toileting, bathing, grooming, dressing, transferring, and mobility. *Id.* at 2. Complex care includes such care as catheters, bowel programs, specialized skin care, suctioning, range of motion exercises, wound care, respiratory treatments, and injections. *Id.* at 4.

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 (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 did not properly complete its assessment because the Department improperly relied on a medical needs form and conversations with Petitioner's healthcare provider. The Department scrutinized Petitioner's original medical needs form because it did not have all the activities circled that she requested assistance with, and then the Department contacted Petitioner's healthcare provider and discussed Petitioner's abilities.

The only role that the medical needs form serves is to certify a medical need for services. In this case, the medical needs form certified that Petitioner had a medical need for services, so it was up to the Department to determine Petitioner's need for services through an assessment. The Department acted improperly when it requested a new medical needs form because the form it had only certified IADL's, and the

Department acted improperly when it scrutinized the medical needs form beyond verifying that the certification was in fact authentic.

The Department spoke with Petitioner's healthcare provider about Petitioner's abilities and needs and relied on that information in determining Petitioner's need for services. Any conversation that the Department had with Petitioner's healthcare provider is hearsay and cannot be considered because it is not reliable evidence. In any event, as previously stated, the Department was required to determine Petitioner's need for services through an assessment. Thus, if the Department had a conversation with Petitioner's healthcare provider, the only bearing that conversation should have had on the Department's decision was to verify whether the provider certified that Petitioner had a medical need for services.


Based on the evidence presented, the Department did not properly complete its assessment. Therefore, the Department's decision must be reversed. The Department must complete a new assessment and base its decision on the assessment. The Department shall then issue a new notice to Petitioner.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department did not properly determine Petitioner's eligibility for HHS.

IT IS ORDERED THAT the Department's decision is **REVERSED**. The Department shall begin to implement this decision within 10 days.

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

