



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

Date Mailed: March 17, 2020
MOAHR Docket No.: 20-000565
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jeffrey Kemm

DECISION AND ORDER

Upon the Petitioner's February 1, 2020, 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 March 17, 2020, from Lansing, Michigan.

Petitioner, [REDACTED] appeared with his witness, [REDACTED] Respondent, Department of Health and Human Services (Department), had Allison Pool, Appeals Review Officer, appear as its representative. The Department had two witnesses: Steven Mathis, Adult Services Specialist, and Kim Williams, Supervisor. Neither party had any additional witnesses.

One exhibit was admitted into evidence during the hearing. A 37-page packet of documents provided by the Department was admitted collectively as the Department's Exhibit A.

ISSUE

Did the Department properly terminate Petitioner's Home Help Services (HHS) effective January 28, 2020?

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 was a HHS recipient.
2. On July 8, 2019, a medical professional certified that Petitioner had a medical need for services.

3. On November 27, 2019, the Department met with Petitioner face-to-face in his home to perform a comprehensive assessment. At the visit, Petitioner advised the Department that he used a cane to get around his house. Based on the Petitioner's use of a cane, the Department determined that Petitioner had a need for hands-on assistance with mobility. The Department approved Petitioner for HHS.
4. On January 28, 2020, Petitioner came to the Department's office to complete a form. Petitioner arrived without the use of any adaptive equipment to assist with his mobility. The Department asked Petitioner where his cane was. Petitioner went to his car to try to retrieve his cane, but Petitioner was unable to retrieve it because it was not in his car. The Department witnessed Petitioner move about without the use of any adaptive equipment or any other assistance.
5. After the Department witnessed Petitioner move about at the Department's office without the use of any adaptive equipment or other assistance, the Department determined that Petitioner did not have a need for hands-on assistance with mobility.
6. On January 28, 2020, the Department mailed a notice of case action to Petitioner to notify Petitioner that his HHS were going to be terminated effective January 28, 2020, because he did not have a need for hands-on assistance with at least one activity of daily living (ADL).
7. On February 1, 2020, 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 activity of daily living (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. The assessment must be updated as often as necessary, but minimally at the six-month review. *Id.* at 1.

Here, the Department found Petitioner eligible for HHS following its receipt of a July 8, 2019, medical needs form and the completion of its comprehensive assessment on November 27, 2019. Thereafter, the Department decided to terminate Petitioner's HHS because the Department observed Petitioner move about without any adaptive equipment or other assistance when Petitioner came to the Department's office on January 28, 2020. The Department then notified Petitioner that his HHS were going to be terminated.

The Department's actions were not in accordance with its policies because the Department did properly determine that Petitioner was ineligible based on a comprehensive assessment before it terminated Petitioner's HHS. Home Help Services (HHS) may be terminated when an assessment determines a client no longer requires HHS. ASM 170 (February 1, 2019), p. 1. Here, the Department determined that Petitioner no longer required HHS after it observed Petitioner move about at the Department's office without any adaptive equipment or other assistance. The Department then terminated Petitioner's HHS without first performing a new comprehensive assessment in Petitioner's home. Since the Department did not perform a new comprehensive assessment before it terminated Petitioner's HHS, the Department was still bound by its determination from its most recent comprehensive assessment. Since the most recent comprehensive assessment determined that Petitioner required HHS, Petitioner's most recent assessment did not determine that Petitioner no longer required HHS, and the Department's termination was not in accordance with ASM 170.

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 terminate Petitioner's 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

DHHS -Dept Contact

Michelle Martin
Capitol Commons
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DHHS-Location Contact

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Petitioner

[REDACTED]
[REDACTED] MI [REDACTED]