



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

Date Mailed: June 17, 2020
MOAHR Docket No.: 20-002426
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jeffrey Kemm

DECISION AND ORDER

Upon Petitioner's April 20, 2020, hearing request, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on June 16, 2020.

Petitioner, [REDACTED] had her authorized hearing representative, [REDACTED] appear and represent her. Respondent, Department of Health and Human Services (Department), had John Lambert, Appeals Review Officer, appear as its representative. The Department had one witness, Lori Bundy, Adult Services Specialist. Neither party had any additional witnesses.

One exhibit was admitted into evidence during the hearing. A 51-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) effective February 6, 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 is a HHS recipient.
2. On February 7, 2020, the Department met with Petitioner in her home to complete an assessment. During the assessment, the Department asked

Petitioner about her need for services, and Petitioner told the Department that she bathes on her own.

3. On February 26, 2020, the Department spoke with Petitioner's provider, and Petitioner's provider advised the Department that Petitioner bathes on her own.
4. The Department reviewed Petitioner's authorized hours after it spoke with Petitioner and her provider, and the Department determined that Petitioner's hours needed to be adjusted to accurately reflect the time that she needs assistance.
5. The Department removed all authorized hours for bathing because Petitioner does not need assistance with bathing.
6. On March 11, 2020, the Department mailed a negative action notice to Petitioner to notify her that her HHS hours were going to be reduced by five hours and 35 minutes per month, effective February 6, 2020, because she did not need assistance with bathing.
7. On April 20, 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.

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.

The amount of time allocated to each task is determined based on interviews with the client and the client's provider, observation of the client's abilities, and use of the

reasonable time schedule (RTS) as a guide. *Id.* at 5. The Department must assess each task according to the average time and frequency required for its completion. *Id.* In this case, the Department asked Petitioner and her provider about Petitioner's need for services, and both reported that Petitioner does not need assistance with bathing. The Department then removed all authorized hours for bathing and sent Petitioner a notice that her HHS hours were going to be reduced, effective February 6, 2020.

Petitioner did not present sufficient evidence to establish that the Department acted improperly by removing all authorized hours for bathing. However, the Department's negative action was effective retroactively contrary to its policy. Notice of a reduction of HHS hours must be effective 10 days after the date the notice is mailed. ASM 150 (February 1, 2019), p. 2-3. In this case, the Department mailed a notice to Petitioner on March 11, 2020, to notify her that her HHS hours were going to be reduced effective February 6, 2020. The Department did not present any evidence to establish that it was not required to provide advance notice. Thus, the Department's notice took effect sooner than permitted by the Department's policy. Therefore, the Department's reduction was improper and must be reversed.

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 reduce Petitioner's HHS effective February 6, 2020.

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

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Petitioner

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