



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: August 7, 2020
MOAHR Docket No.: 20-004015
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Steven Kibit

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.*, and upon Petitioner's request for a hearing.

After due notice, a telephone hearing was held on July 23, 2020. Petitioner appeared and testified on her own behalf. Leigha Burghdoff, Appeals Review Officer, represented the Respondent Department of Health and Human Services (DHHS or Department). Tiffany Polaski, Adult Services Worker (ASW), testified as a witness for the Department, with Emily Piggott, Appeals Review Officer, also present.

During the hearing, Petitioner submitted three proposed exhibits that were entered into the record without objection:

Exhibit #1: Submission of input from third party in nature of amicus curiae
Exhibit #2: Affidavit
Exhibit #3: Medical Documentation¹

The Department also submitted a proposed exhibit that was admitted into the record without objection:

Exhibit A: Evidence Packet

ISSUE

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

¹ Petitioner also submitted additional documentation after the hearing, but the record had already closed and the undersigned Administrative Law Judge will therefore not consider that later documentation.

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 [REDACTED] ([REDACTED]) year-old Medicaid beneficiary who has been diagnosed with lower extremity weakness; arthritis of the neck; wrist arthritis; neuropathy; numbness and tingling in left hand; and history of a stroke. (Exhibit #2, pages 2, 6, 11).
2. On November 22, 2019, Petitioner was referred for HHS through the Department. (Exhibit A, page 15).
3. In December of 2019, following a home visit and assessment, Petitioner was approved for HHS. (Exhibit A, page 15).
4. The ASW subsequently worked with Petitioner on locating a home help provider; one was located and agreed upon; and 60 hours and 59 minutes of HHS were approved for Petitioner on January 30, 2020. (Exhibit A, page 20; Testimony of ASW).
5. However, the home help provider never started providing services to Petitioner. (Testimony of Petitioner).
6. On or about February 27, 2020, Petitioner filed a complaint with the Department regarding her HHS case. (Exhibit A, page 19).
7. The complaint was forwarded to the ASW. (Exhibit A, page 19; Testimony of ASW).
8. On February 28, 2020, the ASW spoke with the home help provider; learned that the provider was not providing services to Petitioner; and deleted the approved payments. (Exhibit A, page 19).
9. Neither Petitioner nor the ASW attempted to contact each other. (Testimony of Petitioner; Testimony of ASW).
10. Petitioner never received HHS through the Department. (Testimony of Petitioner; Testimony of ASW).
11. Her case with the Department did remain open. (Exhibit A, page 15).
12. On May 28, 2020, the ASW notified Petitioner via a telephone message of a six-month review scheduled for June 15, 2020 between 1:15 p.m. and 1:30 p.m. (Exhibit A, page 17; Testimony of ASW).
13. On June 15, 2020, the ASW attempted to complete the six-month review via telephone, but Petitioner did not answer when the ASW called.

(Exhibit A, page 17).

14. The ASW did leave Petitioner a message, but Petitioner did not call the ASW back. (Exhibit A, page 17; Testimony of ASW).
15. On June 15, 2020, the ASW sent Petitioner a written notice stating that Petitioner's HHS would be terminated as of June 29, 2020 because of the missed six-month review. (Exhibit A, pages 7, 18).
16. The notice also advised Petitioner to contact the ASW if she was still in need of services. (Exhibit A, pages 7, 18).
17. Petitioner received the notice of termination, but never contacted the ASW. (Testimony of Petitioner; Testimony of ASW).
18. On June 29, 2020, the Michigan Office Administrative Hearings and Rules (MOAHR) received the request for hearing filed in this matter regarding the termination of Petitioner's HHS. (Exhibit A, pages 4-14).

CONCLUSIONS OF LAW

The Medical Assistance Program 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 statutes, the Social Welfare Act, 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 physician and may be provided by individuals or by private or public agencies.

Here, the Department terminated Petitioner's HHS on the basis that Petitioner had failed to appear for a required redetermination.

Regarding case reviews, Adult Services Manual (ASM) 155 (2-1-2019) states in part:

Home Help cases must be reviewed every six months.

Requirements for case review must include:

- A face-to-face contact is required with the client in the home.
- Review of client satisfaction with the delivery of planned services and care provided by the caregiver or agency.

- Follow-up on any absences or hospitalization coming up or since the last home visit.
- A face-to-face or phone contact must be made with the caregiver or agency provider at each review to verify services are being furnished.

Note: If contact is made by phone, the caregiver or agency provider must offer identifying information such as date of birth and the last four digits of their social security number. A face-to-face interview in the client's home or local Michigan Department of Health and Human Services (MDHHS) office must take place at the next review.

- A review of the current comprehensive assessment and plan of care.
- Verification of the client's Medicaid eligibility, when Home Help services are being paid.
- Follow-up collateral contacts with significant others such as family, guardians, and friends to assess their role in the plan of care, if applicable.

Documentation

Case documentation for **all** reviews must include:

- A new face to face contact should be logged as an SOP event type "six-month review" in MiAIMS contact module. The contact should include that the client was in the home and a brief statement of the requirements of the home visit, the nature of the contact and who was present during the home visit.
- Entering the "six-month review" SOP event type face to face contact with the client automatically updates the disposition details on the 360-overview tab.

Note: A face to face contact entry with the client generates a case management billing.

- A review of **all** MiAIMS modules and tabs with information updated as needed.

- Documented contact details with the Home Help caregiver or agency provider in the contact module on MiAIMS.
- Update new information obtained in the MDHHS-5534, Comprehensive Assessment, modules in MiAIMS.
- The MDHHS-5537, Plan of Care, is automatically updated when areas of concern are identified as an issue in the comprehensive assessment.
- Change in caregivers or agency providers if required.
- Add new authorization for services continuing.
- Send notification if services have been increased or decreased; [see: ASM 150 Notification of Eligibility Determination](#).

ASM 155, pages 1-2

Here, Petitioner's HHS were terminated pursuant to the above policies and on the basis that the Department was unable to complete the required case review.

In support of that decision, the ASW testified that a review with a client is required every six months per the above policy, but that she was not able to complete such a review in this case because Petitioner did not answer when the ASW called or respond to her message. She also testified that the notice of termination advised Petitioner that she could contact the ASW prior to the effective date of the termination if Petitioner still needed services, but that Petitioner did not contact her. The ASW further testified that she was aware that Petitioner did not have a provider, had not been receiving the approved services, and had filed a complaint about her case; but that the ASW did not attempt to contact Petitioner prior to attempting the review and that it was Petitioner's responsibility to contact her.

In response, Petitioner testified that, when she was assessed for services, she made it clear that she did not know anyone and needed the ASW's help in finding a provider. She also testified that, while the ASW did help in arranging a provider; the ASW never sent Petitioner or the provider a time and task sheet regarding what specific services were approved; the provider never starting working with Petitioner and eventually had to take a different job; and that the ASW never contacted Petitioner again or assisted in finding another provider. Petitioner further testified that she filed a complaint with the Department in February of 2020 and both a Freedom of Information Act (FOIA) request and complaint with a Department Board Member in June of 2020, but that she never heard from the ASW. Petitioner did testify that she never attempted to contact the ASW directly, even after she received the notice of a scheduled review, because there were

no continued services to review, or the notice of termination advising her to contact the ASW if she was still in need of services, because there was nothing to talk about until Petitioner received something in writing.

Petitioner bears the burden of proving by a preponderance of the evidence that the Department erred in terminating her HHS. Moreover, the undersigned Administrative Law Judge is limited to reviewing the Department's decision in light of the information that was available at the time the decision was made.

Given the available information and applicable policies in this case, Petitioner has failed to meet that burden of proof and the Department's decision must be affirmed.

The ASW properly scheduled and attempted the required six-month review but was unable to complete it after Petitioner failed to appear and, consequently, Petitioner no longer met the requirements for HHS at the time her services were terminated. Moreover, while the ASW arguably should have contacted Petitioner earlier once she learned that the agreed-upon provider would not be providing services, that is ultimately irrelevant in this case, where it is undisputed that the ASW both properly scheduled the six-month review and advised Petitioner in the advance notice of termination to contact her prior to the effective date of termination if Petitioner still required services.

Rather than asserting that she was available for the six-month review or that she subsequently attempted to contact the ASW in order to complete it, Petitioner instead testified as to why she believed that a six-month review or calling the ASW after receiving the notice of termination would be pointless, *i.e.* because she had never received any services and there were therefore no continued services to review. However, the undersigned Administrative Law Judge does not find that argument to be persuasive given that the policy regarding the six-month review is clear and it was the fault of Petitioner that the required review did not occur.

To the extent Petitioner still needs and wants HHS, then she can always request such services again in the future. With respect to the issue in this case however, Respondent's decision must be affirmed given the available record and applicable policies.

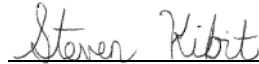
DECISION AND ORDER

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

IT IS, THEREFORE, ORDERED that:

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

SK/sb



Steven Kibit
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

DHHS

[REDACTED]
[REDACTED], MI
[REDACTED]

Agency Representative

Leigha Burghdoff
P.O. Box 30807
Lansing, MI
48909

Petitioner

[REDACTED]
[REDACTED], MI
[REDACTED]