



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
Date Mailed: September 11, 2020
MOAHR Docket No.: 20-004646
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

HEARING DECISION

Following Petitioner's request for a hearing, this matter is before the undersigned administrative law judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 42 CFR 438.400 to 438.424; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; and Mich Admin Code, R 792.11002. After due notice, a hearing was held via telephone conference on August 13, 2020. Petitioner appeared and was unrepresented. The Michigan Department of Health and Human Services (MDHHS) was represented by Aundrea Jones, hearing facilitator.

ISSUES

The first issue is whether MDHHS properly denied Petitioner's Direct Support Services (DSS) request for a vehicle repair.

The second issue is whether there is administrative jurisdiction for Petitioner's request for a new specialist.

FINDINGS OF FACT

The administrative law judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On [REDACTED], 2020, Petitioner submitted documentation to MDHHS requesting repairs for a 2009 vehicle.
2. On March 31, 2020, MDHHS sent Petitioner written notice of a denial of vehicle repair due to Petitioner failing to verify self-employment income and current vehicle payments.
3. As of March 31, 2020, MDHHS had not sent Petitioner a Verification Checklist requesting self-employment income or proof of vehicle payments.

4. On April 20, 2020, Petitioner mailed MDHHS a request for a hearing to dispute the denial of vehicle repair. Additionally, Petitioner requested a new specialist.
5. On July 1, 2020, MDHHS received Petitioner's hearing request.

CONCLUSIONS OF LAW

Direct Support Services (DSS) is established by the Social Welfare Act, MCL 400.1-.119b. The program is administered by the Department pursuant to MCL 400.10 and 400.57a and Mich Admin Code R 400.3603.

Petitioner requested a hearing to dispute a denial of a request for vehicle repair. A Notice of Case Action dated March 31, 2020, stated that Petitioner's request was denied due to her failure to verify current vehicle payments and self-employment income. Exhibit A, pp. 19-22. Before the merits of Petitioner's request may be evaluated, MDHHS contended that Petitioner's hearing request should be dismissed because it was untimely.

A client's request for hearing must be received in the MDHHS local office within 90 days of the date of the written notice of case action. BAM 600 (January 2020) p. 6. Other than requests disputing Food Assistance Program eligibility, hearing requests must be submitted to MDHHS in writing. *Id.*, p. 2.

Petitioner's hearing request was stamped as received by MDHHS on July 1, 2020. Exhibit A, pp. 23-25. A receipt date of July 1, 2020 is 92 days after MDHHS mailed Petitioner a denial notice. The notice of denial stated that Petitioner's hearing request must be received by June 29, 2020, to be valid. Exhibit A, p. 20. This evidence was consistent with rejecting Petitioner's hearing request as untimely.

Petitioner testified that she sent her hearing request long before July 1, 2020, and that MDHHS should have received it long before July 1, 2020. Petitioner's testimony was consistent with her written hearing request which she dated as April 20, 2020. In its hearing packet, MDHHS included what appeared to be a copy of the envelope in which Petitioner's hearing request was mailed. Exhibit A, p. 25. The envelope included three different date stamps: Petitioner's local office date stamp of July 1, 2020, a "Metroplex III" date stamp dated May 18, 2020, and a third stamp which was not legible. Neither side could explain what "Metroplex III" was, or why it would be stamped on Petitioner's mailing envelope. Additionally, the envelope included a mailing address in Lansing, Michigan. This evidence was supportive that Petitioner's hearing request was received by multiple MDHHS offices.

It should be noted that clients are under no particular obligation to send hearing requests to the MDHHS office where their case is assigned. For example, if a client assigned to a Wayne County MDHHS office sends a hearing request to an MDHHS office in Lansing, MDHHS should recognize the hearing request as received on the date that the Lansing office receives it. This scenario plausibly explains why multiple date

stamps and addresses appear on the envelope in which Petitioner enclosed her hearing request.

The evidence established that MDHHS received Petitioner's hearing request before June 29, 2020. Thus, Petitioner's hearing request was timely, and the merits of Petitioner's DSS dispute may be evaluated.

DSS are goods and services provided to help families achieve self-sufficiency. BEM 232 (January 2020) p. 1. DSS includes Employment Support Services (ESS) that directly correlates to removing an employment-related barrier. *Id.* Vehicle repairs fall under ESS. *Id.*

MDHHS is to authorize vehicle repairs for each participant for a vehicle that is the primary means of transportation for employment-related activities, even if public transit is available. *Id.*, p. 16. The total cost of repairs may not exceed \$900 including any repairs done in the previous 12 months. *Id.* Clients may contribute any amount over \$900 prior to payment. *Id.*

Prior approval is required before authorizing a major repair. *Id.* Specialists are to ensure that all of the following conditions are met:

- An eligible group member owns the vehicle.
- The client requesting the service has a valid driver's license.
- The repair is expected to make the vehicle safe and roadworthy including new tires, headlamps, batteries, etc. *Id.*

There is no entitlement for DSS. p. 1.*Id.*, p. 1. The decision to authorize DSS is within the discretion of MDHHS or PATH program based on funding. *Id.*

MDHHS contended that it had total discretion in evaluating Petitioner's request for a vehicle repair; thus, any denial cannot be reversed. Though MDHHS has a degree of discretion, its discretion is not unlimited. This conclusion is supported by MDHHS policy which lists procedures for evaluating requests for DSS. Thus, MDHHS's denial will not be affirmed solely based on the discretion MDHHS has in evaluating DSS requests.

One stated basis for DSS denial was Petitioner's failure to verify current vehicle payments. Notably, verification of current payments is not a requirement for a vehicle repair unless the vehicle is a lease. *Id.*, p. 16. The evidence did not establish whether Petitioner sought repair for a leased or self-owned vehicle; however, it is known Petitioner requested repair for a 2009 vehicle. Exhibit A, p. 6. Generally, persons do not lease vehicles which are 11 years old. Thus, Petitioner likely owned her vehicle. As a vehicle owner, MDHHS policy does not require that she verify that her payments were current, and any denial for a failure to verify current payments would be improper.

MDHHS also denied Petitioner's request for DSS due to Petitioner's alleged failure to verify self-employment income. MDHHS presented three self-employment income forms dated February 20, 2020, which were presumably mailed to Petitioner.

For all programs, MDHHS is to inform the client what verification is required, how to obtain it, and the due date. BAM 130 (April 2017), p. 3. MDHHS is to use the DHS-3503, Verification Checklist (VCL), to request verification. *Id.*

MDHHS did not present evidence that a VCL was mailed to Petitioner. Without evidence of a VCL mailing, a denial for a client's failure to verify information cannot follow.

Given the evidence, MDHHS improperly denied Petitioner's request for vehicle repairs. As a remedy, Petitioner is entitled to a reinstatement of her application requesting vehicle repairs.

Petitioner additionally requested a hearing to replace her assigned case specialist. Exhibit A, p. 23. Petitioner's remedy of case specialist replacement is not a request for which there is administrative hearing jurisdiction.

A hearing can be granted for actions affecting benefits or services. Administrative hearing jurisdiction is limited to the following:

- Denial of an application or supplemental payment.
- Reduction in benefits or services.
- Suspension or termination of benefits or services.
- Restrictions under which benefits or services are provided.
- Delays in action beyond the standards of promptness.
- A denial of expedited service or the current level of benefits (FAP and CDC only)

BAM 600 (October 2018), p. 5.

A desire for a new specialist is not among the reasons for which a hearing may be granted. As stated during the hearing, any reassignment and/or replacement of a specialist is completely within the discretion of MDHHS. Accordingly, Petitioner's request for a new specialist is appropriately dismissed.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds no administrative jurisdiction for Petitioner's request for a replacement case specialist. Concerning Petitioner's request for a new case specialist, Petitioner's hearing request is **DISMISSED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS improperly denied Petitioner's request for DSS. It is ordered that MDHHS commence the following actions within 10 days of the date of mailing of this decision:

- (1) Reregister Petitioner's request for vehicle repair; and
- (2) Process Petitioner's request for vehicle repair subject to the findings that MDHHS failed to mail Petitioner a Verification Checklist, and failed to establish a basis for requesting current payments for a non-leased vehicle.

The actions taken by MDHHS are **REVERSED**.

CG/tlf



Christian Gardocki

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 30639
Lansing, Michigan 48909-8139

Via Email:

MDHHS-Wayne-18-Hearings
BSC4 Hearing Decisions
D. Sweeney
MOAHR

Petitioner – Via First-Class Mail:

