



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: June 3, 2022
MOAHR Docket No.: 22-001760
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, 42 CFR 431.200, *et seq.* and 42 CFR 438.400, *et seq.*, and upon Petitioner's request for a hearing.

After due notice, a telephone hearing was held on May 24, 2022. [REDACTED], Petitioner's daughter, appeared and testified on Petitioner's behalf. Petitioner also testified on his own behalf. Josephine Messelmani, Vice President of Long Term Care and Services, appeared and testified on behalf of the Respondent Detroit Area Agency on Aging, with Alberta Smith-Plump, Manager, also present.

During the hearing, Petitioner's request for hearing was admitted into the record as Exhibit #1, pages 1-3.

ISSUE

Did Respondent properly terminate Petitioner's Community Transition Services (CTS)?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Respondent is a contract agent of the Michigan Department of Health and Human Services (MDHHS) and is responsible for eligibility determinations and the provisions of CTS.
2. On February 25, 2022, while in a nursing facility, Petitioner contacted Respondent about CTS and an initial conversation was held. (Testimony of Petitioner; Testimony of Respondent's representative).
3. No specific services were approved at that time. (Testimony of Petitioner; Testimony of Respondent's representative).

4. On February 28, 2022, Petitioner moved out of his nursing facility, without any assistance or services from Respondent. (Testimony of Petitioner).
5. On March 25, 2022, Respondent contacted Petitioner, who reported that he had moved out of the nursing facility on February 28, 2022, and that he was satisfied with his transition. (Testimony of Petitioner).
6. On April 4, 2022, Respondent sent Petitioner written notice that his CTS would be terminated. (Exhibit #1, page 3).
7. With respect to the reason for the decision, the notice stated: "You have left the nursing facility without assistance of Community Transition Services Program". (Exhibit #1, page 3).
8. On April 15, 2022, the Michigan Office of Administrative Hearings and Rules (MOAHR) received Petitioner's request for hearing with respect to that decision. (Exhibit #1, pages 1-3).

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 statute, the Social Welfare Act, the Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

Community Transition Services (CTS) are Medicaid Home and Community-Based Services (HCBS) authorized through §1915(i) of the Social Security Act to assist nursing facility residents that would like to explore community-based living options

With respect to CTS, the applicable version of the Medicaid Provider Manual (MPM) states in part:

Community Transition Services (CTS) are Home and Community-Based Services (HCBS) for Medicaid beneficiaries who meet eligibility criteria. The benefit is administered by the Michigan Department of Health and Human Services (MDHHS) on a fee-for-service (FFS) basis through transition agencies including Area Agencies on Aging, Centers for Independent Living, and other qualified community-based organizations.

Beneficiaries eligible for CTS include nursing facility and institutional residents who meet needs-based criteria and have at least one risk factor as described in this chapter. Provision of CTS does not relieve institutions of required discharge planning activities.

* * *

To be eligible for CTS, beneficiaries must:

- be eligible for Medicaid or have **all** the following:
 - a completed Michigan Medicaid application with all necessary verifications submitted to the local MDHHS office awaiting review;
 - reasonable assurance that local MDHHS office will likely approve the submitted application; and
 - application registration on Bridges as verified by MDHHS.
- be age 65 or older;
- be age 18 through 64 with a physical disability;
- meet one of the following:
 - be at risk of inappropriate institutionalization due to being served in an institution but do not meet the level of care for that institution; or
 - indicate on the Freedom of Choice form that they no longer choose to receive long term services and supports in an institutional setting;
- meet Needs-Based Criteria identified within this chapter; and
- have at least one risk factor, as identified within this chapter, that cannot be addressed by standard institutional discharge procedures.

* * *

SECTION 10 – PROVISION OF NOTICES

Transition agencies must provide each beneficiary the appropriate Adverse Action Notice when the agency terminates, suspends, or reduces previously authorized services, or denies a request for enrollment or additional services. The types of Adverse Action Notices are: 1) Adequate Action Notice, and 2) Advance Action Notice.

10.1 ADEQUATE ACTION NOTICE

The Adequate Action Notice is a written statement advising the beneficiary of a decision to deny or limit authorization of Medicaid services requested. This notice is provided on the same date the action takes effect.

An Adequate Action Notice is also sent to the beneficiary in the following circumstances:

- when the transition agency is unable to schedule an appointment for the community transition assessment within one week of receiving the referral;
- the beneficiary discharges from an institution prior to the transition agency contacting the beneficiary and the assessment could not be conducted;
- the transition agency has information confirming the death of the beneficiary;
- the transition agency receives a clearly written statement signed by a beneficiary who no longer wishes to receive services;
- the beneficiary gives information that requires the termination of services and indicates that they understand termination is the result of supplying this information;
- the beneficiary's whereabouts are unknown and mail is returned without a forwarding address;
- the transition agency determines the beneficiary has eligibility for Medicaid in a different jurisdiction; and
- the date of the action will occur in less than 10 days.

The Adequate Action Notice must contain:

- a statement of the action being taken;
- the reason for the action;
- the regulation(s) that supports the action;
- an explanation of the beneficiary's right to request a State Fair Hearing and instructions for doing so; and

- an explanation that the beneficiary may have self-representation or use legal counsel or another spokesperson.

*MPM, January 1, 2022 version
CTS Chapter, pages 1-2, 22*

Here, the facts in this case are undisputed and, while Petitioner and Respondent had an initial conversation about CTS, Petitioner moved out of his nursing facility a few days later without any specific services through Respondent being approved or provided. Moreover, when Respondent subsequently contacted him, Petitioner expressly reported that he was satisfied with his transition.

Given those circumstances, Respondent's decision must be affirmed. By his own report at the time, which he also confirmed during his testimony, Petitioner had successfully transitioned out of the nursing facility on his own and without any assistance from Respondent. Accordingly, CTS were not medically necessary and, while it is not clear that they were ever formally approved, any further services should have been denied or terminated.

The parties discussed other services that Petitioner may be interested in now that he has transitioned out of the nursing facility, including services through the MI Choice Waiver program, and they agreed that Respondent would conduct an assessment with Petitioner. However, any subsequent decision by Respondent is beyond the scope of this case, with Petitioner retaining the right to request an administrative hearing with respect to any negative action if and when appropriate, and Respondent's decision in this case must be affirmed given the information available at the time.

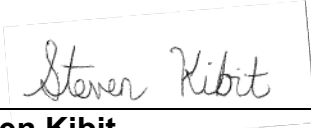
DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Respondent properly terminated Petitioner's Community Transition Services.

IT IS THEREFORE ORDERED that:

The Respondent's decision is **AFFIRMED**.

SK/tem


Steven Kibit
Administrative Law Judge

NOTICE OF APPEAL: Petitioner 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

Via Electronic Mail:

DHHS Department Rep.

Elizabeth Gallagher
400 S. Pine, 5th Floor
Lansing, MI 48933
GallagherE@michigan.gov

Community Health Rep

Detroit Area Agency on Aging
1333 Brewery Park Blvd, Suite 200
Detroit, MI 48207
Brownsy@daaa1a.org

Via First Class Mail:

Authorized Hearing Rep.

[REDACTED]
MI [REDACTED]

Petitioner

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MI [REDACTED]