



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: December 19, 2022
MOAHR Docket No.: 22-004962
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Robert J. Meade

DECISION AND ORDER

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

After due notice, a hearing was held on December 14, 2022. Petitioner appeared and testified on her own behalf. [REDACTED] Provider, appeared as a witness. Leigha Burghdoff, Appeals Review Officer, appeared on behalf of Respondent, Michigan Department of Health and Human Services (Respondent, Department or MDHHS).

PRELIMINARY ISSUE

In her request for hearing, Petitioner also indicated that she was interested in seeking retroactive pay for her Home Help Services (HHS) from 2015 to 2021. The undersigned informed Petitioner that jurisdiction was lacking to consider any payment issues prior to the last action in March 2022 (which is the underlying issue in the instant appeal) because her request would be considered untimely.

The Social Security Act and the federal regulations which implement the Social Security Act require an opportunity for fair hearing to any recipient who believes the Department may have taken an action erroneously. See 42 CFR 431.200 *et seq.* The opportunity to fair hearing is limited by a requirement that the request be made within 90 days of the negative action. The regulations provide, in pertinent part:

Request for hearing.

(d) The agency must allow the applicant or recipient a reasonable time, not to exceed 90 days from the date that notice of action is mailed, to request a hearing. 42 CFR 431.221(d).

Here, Petitioner's request for hearing was received on October 27, 2022, or outside the 90-day time to request a hearing for any action that occurred prior to July 29, 2022. Petitioner was advised that if she wished to seek a payment or settlement with the

Department for the period of 2015-2021, she would need to file an appeal in Circuit Court.

ISSUE

Did Petitioner receive retroactive pay for Home Help Services (HHS) for the months of March 2022 through September 2022?

FINDINGS OF FACT

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

1. At an October 11, 2022 telephone hearing, the Department indicated that it had completed a new review of Petitioner's HHS and would be increasing Petitioner's HHS, retroactive to March 1, 2022. (Exhibit A, p 2; Testimony).
2. On October 13, 2022, the Department issued a retroactive payment to Petitioner's HHS provider for June to September 2022. (Exhibit A, p 11; Testimony).
3. Also on October 13, 2022, the Department attempted to make retroactive payments to Petitioner's HHS provider for March 2022 through May 2022, but a system error occurred, and the payments were not processed. (Exhibit A, p 2; Testimony)
4. On October 18, 2022, Petitioner's provider contacted Petitioner's Adult Services Worker (ASW) to inquire about the payments. Petitioner's ASW then noted the error and reprocessed the payments. (Exhibit A, p 8; Testimony)
5. On October 27, 2022, Petitioner's Request for Hearing was received by the Michigan Office of Administrative Hearings and Rules. (Exhibit A, p 8)
6. On November 9, 2022, the Department issued a retroactive payment to Petitioner's HHS provider for May 2022. (Exhibit A, p 10; Testimony).
7. On November 17, 2022, the Department issued a retroactive payment to Petitioner's HHS provider for March and April 2022. (Exhibit A, p 10; Testimony).

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.

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, there was a delay in the Department issuing retroactive payments for Petitioner's HHS for the months of March 2022 through September 2022 due to a system error. However, the Department eventually made the required retroactive payments and Petitioner acknowledged at the hearing that the payments had been received.

Based on the evidence presented, Petitioner failed to prove by a preponderance of evidence that the Department failed to make retroactive payments for HHS for the period of March 2022 through September 2022. While there was a delay in issuing the payments, the Department eventually issued the payments and Petitioner now acknowledges receipt of the payments. As such, the Department's decision was proper and must be upheld.

As indicated above, Petitioner's request for retroactive payments for HHS for the period of 2015 through 2021 is dismissed as untimely.

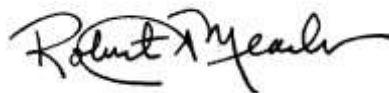
DECISION AND ORDER

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

IT IS THEREFORE ORDERED that:

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

Petitioner's request for retroactive pay for her Home Help Services (HHS) from 2015 to 2021 is **DISMISSED** as untimely.



RM/sj

Robert J. Meade
Administrative Law Judge

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

Via Electronic Mail:

DHHS Department Contact

Michelle Martin
Capitol Commons
Lansing, MI 48909
**MDHHS-Home-Help-
Policy@michigan.gov**

DHHS Location Contact

Sherry Reid
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Wayne County, BSC-4
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MAHShearing@michigan.gov**

DHHS Department Representative

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DHHS Department Representative

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Via First Class Mail:

Petitioner

[REDACTED]
[REDACTED] MI [REDACTED]

Authorized Hearing Representative

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[REDACTED] MI [REDACTED]