

ISSUES

- (1) Did Respondent properly deny payment/reimbursement for the installation of signage to promote Petitioner's business?

FINDINGS OF FACT

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

1. On REDACTED 2018, Petitioner applied for benefits with Respondent. (Testimony.)
2. Around the time of application, Petitioner began working with Petitioner in the development of an IPE with a goal of running her own hair salon. (Testimony.)
3. As part of the IPE process, Petitioner obtained bids from potential vendors for the placement of signage to be installed at Petitioner's place of business. (Testimony.)
4. On or around July 2, 2021, Petitioner received from Universal LED an invoice for the placement of signage in the amount of \$4,838. \$3,400 for the sign, \$425 for the replacement of monument signs, \$240 for permit fees, and \$500 for install fees. \$3,640 of this amount was for signage considered by MRS.¹ (Exhibit A; Exhibit B; Testimony.)
5. On September 2, 2021, Petitioner signed and agreed to an IPE. In the IPE, Petitioner and MRS agreed to an estimated planned service cost for signage in the amount of \$4,140. (Exhibit B.) The IPE stated the following concerning the signage:

I will provide MRS a copy of the Certificate of Occupancy documenting the building at REDACTED, MI REDACTED has passed the City of REDACTED final building inspection. At that time, MRS will cover the cost for building signage based on the lowest of 3 bids, not to exceed \$4,140.00 with signage installed on the building only. Signage will be installed by the contract onto the outside of the building. I will be able to take the signage at the end of the lease. A total of three bids will be obtained and the agency will cover the amount equivalent to the lowest bid for this service.²

6. Within the IPE, Petitioner also acknowledged and agreed that MRS would not reimburse Petitioner for services initiated prior to MRS issuing a vendor authorization. (Exhibit B.) The IPE stated the following concerning vendor authorization:

¹ "LED Channel Letters 17" Shaddai 10" Collection. See Exhibit A.

² See Exhibit B, p 0006.

I will sign a written consent to enable MRS to communicate with vendors to help facilitate the process for registering them as a vendor with the State of Michigan.

MRS will not reimburse me or a service provider for services initiated prior to the issuance of a MRS Vendor Authorization for Service.

If I do not make needed information available, MRS will be unable to assist me.³

7. Within the IPE, Petitioner also acknowledged she would participate in the development of her plan and reviewed her rights and responsibilities under the IPE with her counselor. (Exhibit B.) The IPE stated the following concerning her participation:

I have developed this Employment Plan or have fully participated in its development. I have selected the specific employment goal, services, and service providers stated above. My employment goal reflects my abilities, interests, priorities and informed choice. My counselor has reviewed my rights and responsibilities with me. I have received a copy of this Plan and the Rights and Responsibilities.⁴

8. On February 3, 2022, Petitioner's MRS Counselor sent an email to Petitioner, asking what the status of Petitioner's Certificate of Occupancy was and reminded Petitioner that Respondent needed the Certificate of Occupancy to move forward with the expenditures in Petitioner's IPE. (Exhibit C; Exhibit 6.)

9. On February 3, 2022, Petitioner sent MRS an email indicating she had not yet received a Certificate of Occupancy. (Exhibit C; Exhibit 6.)

10. On February 4, 2022, Petitioner's MRS Counselor sent Petitioner a letter. In the letter, Petitioner's MRS Counselor wrote "I want to be sure to reiterate that MRS policy states that authorization to vendors are the primary means of purchasing services for individuals. It is federally required that they be issued prior to or simultaneously with the initiation of services, per agency policy." (Exhibit D.)

³ *Ibid* at 0008-0009.

⁴ *Ibid* at 0010.

11. On February 18, 2022, Petitioner sent Respondent an email, wherein Petitioner informed MRS about a price increase from Universal LED. Petitioner's email contained an attachment from Universal LED. (Exhibit F; Exhibit 7.)

12. The second Universal LED quote had a total list price of \$6,413 for "LED Channel Letter 14" (REDACTED with back lit aluminum" and "LED Channel Letter 9" REDACTED." (Exhibit F.)

13. On June 9, 2022, Petitioner's MRS Counselor sent a text to Petitioner letting her know she would be in the area of Petitioner's business and would bring release forms for Petitioner's signature. (Exhibit G; Testimony.)

14. Later on, following the text message, Petitioner's MRS Counselor noticed signage had already been placed at Petitioner's business and created a case note to document the incident. Within the case notes, Petitioner's MRS Counselor noted the following:

Of Note/Signage Complete: While at REDACTED's business location, counselor noticed that REDACTED already has signage installed reading REDACTED and possibly REDACTED" but counselor had to drive to her meeting and didn't write down the specific wording after noting REDACTED." Counselor was surprised by this because REDACTED's IPE states MRS is assisting with signage and counselor has been working on getting a signage quote to use as a frame of reference. When counselor asked REDACTED about this, REDACTED explained that her father purchased the signage for her. REDACTED explained this in her text message to counselor as well as during the phone call REDACTED made to counselor at this time.

Counselor has explained on a number of occasions to REDACTED that MRS is not permitted to fund services retroactively and REDACTED did not request funds for the signage today.⁵

15. On September 28, 2022, Petitioner obtained a Certificate of Occupancy. (Exhibit H.)

16. On November 9, 2022, Petitioner requested a formal hearing seeking payment for signage to be authorized retroactively in the amount of \$6,996⁶. (Exhibit J)

⁵ Exhibit G, pp 24-25.

⁶ Petitioner's Prehearing Brief, p 1.

CONCLUSIONS OF LAW

The purpose of Title I of the Rehabilitation Act of 1973, as amended, 29 USC § 720 *et seq.*, is to provide for a comprehensive, coordinated, effective, efficient, and accountable program of vocational rehabilitation which is an integral part of a statewide workforce investment system, and designed to assess, plan, develop, and provide vocational rehabilitation services for individuals with disabilities, consistent with their strengths, resources, priorities, concerns, abilities, and capabilities, interests and informed choice, so that such individuals may prepare for and engage in gainful employment.⁷ Federal regulations require MRS to develop and maintain a written policy governing the authorization of services.⁸ These policies must ensure that the provision of services is based on the rehabilitation needs of each individual as identified in that individual's IPE.⁹ These policies must also establish the timely authorization of services, including any conditions under which verbal authorization can be given.¹⁰ Furthermore, federal law and state policies and procedures governing procurement require prior authorization before services can begin.¹¹

Regarding Purchased Services, Retroactive Authorizations, and Authorization for Services pursuant to the Rehabilitation Act, MRS Policy states in part:

- All purchased services for applicants or eligible individuals shall be authorized prior to or simultaneously with the initiation of services and according to all legal, State purchasing and Michigan Rehabilitation Services (MRS) requirements.

The counselor shall not authorize for services that have been completed, or for bills that were previously incurred.¹²

- Retroactive authorizations are prohibited.
- A retroactive authorization is one that is issued after services have been initiated or received. Since this is prohibited by federal regulations, a retroactive authorization constitutes an audit exception that could result in the forfeiture of Michigan Rehabilitation Services (MRS) funds unless prior written or verbal approval was given to the provider. A retroactive authorization may be issued only when oversight or other unavoidable circumstances prevented the

⁷ See 29 USC 720(a)(2).

⁸ 34 CFR 361.50(a).

⁹ *Id.*

¹⁰ 34 CFR 361.50(e).

¹¹ 2 CFR 200.317; State of Michigan Procurement Policy Manual, §11.1, Attachment A.

¹² MRS Policy 9000: Purchased Services.

authorization from being issued in a timely manner. Retroactively issued authorizations must be accompanied by a case note that documents the reason why the authorization was retroactive, and steps to be taken to correct the recurrence of such an audit exception.

Site Manager approval and signature on retroactive authorizations is required.¹³

- Retroactive authorizations are prohibited and result in an audit exception. When retroactive authorizations are issued, the MRS manager will notify the Division Director. Division Director will determine if there is a need to contact the Aware Help Desk and remove the authorization access of the offending staff member and require fiscal training, or if other corrective actions are warranted. If subsequent retroactive authorizations are issued by any staff person, the MRS manager will follow the normal corrective action. If the manager fails to address retroactive authorizations as outlined above, the manager will also face corrective action.

To rectify a retroactive authorization and ensure that services are provided to meet the needs of the customer, an MRS division director is required to issue the authorization as a corrective measure.¹⁴

MRS' IPE and written communications with Petitioner made it clear that MRS would not reimburse her or a service provider for services rendered without prior authorization. Consequently, Petitioner knew, or should have known that MRS would not reimburse her for services initiated without MRS' prior authorization. Yet, in this case, the signage at issue was installed without the approval of MRS.

Additionally, Petitioner is not entitled to reimbursement because the signage at issue was installed without obtaining a certificate of occupation for the building as agreed to in Petitioner's IPE; because MRS did not issue a vendor authorization for the service; and because retroactive authorizations are prohibited.¹⁵

In closing, Petitioner put forth 5 main arguments as to why Respondent should pay for the signage at issue. First, Petitioner pointed to the signage being an essential service contained in Petitioner's IPE. Second, Petitioner argues MRS should have explained the authorization process when it communicated with Universal LED. Third, Petitioner indicates they never directed Universal LED to install the sign prior to authorization. Fourth, Petitioner indicates she would be harmed if the sign is removed or she is directed to pay for the signage. And lastly, Petitioner argues MRS policy prioritizes ensuring customers receive essential services; and MRS policy prioritizes minimizing or remedying unanticipated harm to its customers.

¹³ MRS Policy 9175 Retroactive Authorizations.

¹⁴ MRS Policy 9000 Authorization for Services.

¹⁵ MRS policy stats that authorizations to vendors are the primary means of purchasing services for individuals, as it is federally required that they be issued prior to or simultaneously with the initiation of services, per agency policy.

While the placement of signage may be an essential service contained in Petitioner's IPE, Petitioner still had to adhere to the requirements within the IPE; and one of those requirements was to obtain a certificate of occupancy prior to the signage being placed. Just because Petitioner alleges the placement of signage was essential, does not circumvent the other requirements and or policies that apply.

In regard to Petitioner's argument that MRS should have explained the authorization process when it communicated with Universal LED, Petitioner failed to provide any direct policy or rule that would require such communication. Furthermore, even if there were such a requirement, Petitioner is still responsible to ensure that the other criteria within the IPE is met for reimbursement and assistance. Once again, in this case, the signage was placed prior to the certificate of occupancy being issued.

Next, Petitioner argued they never provided authorization to LED to have the signage placed. This testimony however is self-serving, and there is little to no documentation or other evidence to corroborate these claims.¹⁶ Moreover, Petitioner was less than truthful with MRS staff when initially contacted after it was discovered that the signage was placed. At that time, Petitioner reported her father had paid for the Signage.

Petitioner also put forth an equitable argument that she would be financially harmed if the signage was removed, or she was required to pay for it. However, this tribunal lacks the authority to grant equitable relief¹⁷, overrule statutes, overrule regulations, or overrule or make exceptions to Labor and Economic Opportunity policy.¹⁸ Administrative Law Examiners do not inherently have equitable jurisdiction thus a statute must expressly grant the Tribunal the equitable powers to grant the Petitioner the equitable relief they now seek.¹⁹ The Petitioner failed to identify any statute that grants this Tribunal the authority to address their equitable arguments. "An appellant may not merely announce a position then leave it to this Court to discover and rationalize the basis for the appellant's claims; nor may an appellant give an issue only cursory treatment with little or no citation of authority."²⁰

Lastly, Petitioner argues, MRS policy prioritizes minimizing or remedying unanticipated harm to its customers.²¹ The policy, however, appears to focus on unanticipated and unavoidable harm. The harm in the case arises from a lack of Petitioner following the

¹⁶ Exhibit I lacks a date and lacks a level of authentication needed to add any probative value to this case.

¹⁷ *Huron Behavioral Health v Department of Community Health*, 293 Mich App 491 (2011).

¹⁸ *See Delegation of Authority*.

¹⁹ *Eric Gorges v Secretary of State*, unpublished order of the Court of Appeals, entered January 22, 2019 (Docket No 339490).

²⁰ *Chessman v Williams*, 311 Mich App 147, 161; 874 NW2d 385 (2015).

²¹ MRS Section 2000.

guidelines established by the IPE. Once again, Petitioner's obligation to obtain a certificate of occupation prior to the placement of the signage.²²

Consequently, Petitioner's request for retroactive authorization should be denied. MRS policies and Petitioner's IPE all prohibit retroactive authorizations. Petitioner was made aware of all requirements that were needed to be met in order for the signage to be paid for. Furthermore, Petitioner has failed to identify a legal basis for this Tribunal to retroactively approve services or cover the costs incurred in violation of MRS' written policies and the parties' signed IPE.

DECISION AND ORDER

For all of the reasons stated in the foregoing opinion, Respondent's actions are **AFFIRMED**.

NOTICE: THE PETITIONER HAS NOW EXHAUSTED ALL AVAILABLE ADMINISTRATIVE REMEDIES. ANY FURTHER APPEAL OF THIS DECISION IS THROUGH JUDICIAL REVIEW. ANY PARTY MAY BRING A CIVIL ACTION IN ANY STATE COURT OF COMPETENT JURISDICTION OR IN A DISTRICT COURT OF THE UNITED STATES OF COMPETENT JURISDICTION.