



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
SUZANNE SONNEBORN
EXECUTIVE DIRECTOR

MARLON I. BROWN, DPA
ACTING DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: January 23, 2024
MOAHR Docket No.: 23-008842
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Corey Arendt

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; 42 CFR 431.200 to 431.250; and 42 CFR 438.400 to 438.424, upon the Petitioner's request for a hearing.

After due notice, a hearing was held on January 17, 2024. [REDACTED] Petitioner's daughter, appeared and offered testimony on Petitioner's behalf. [REDACTED] Petitioner, also presented testimony. Emily Piggott, Appeals Review Officer, appeared on behalf of the Respondent, the Department of Health and Human Services (Department). Brandi Walker, Adult Services Supervisor, appeared as a witness for the Department.

Exhibits:

Petitioner	None
Department	A – Hearing summary

ISSUE

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

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 or around September 29, 2011, Petitioner began receiving HHS. (Exhibit A.)
2. On September 13, 2023, Petitioner received dialysis treatment. Following the treatment, Petitioner returned home. (Exhibit A; Testimony.)

3. Dialysis treatment renders Petitioner sleepy, and as a result, Petitioner took a nap in his bed following his return home from dialysis. (Exhibit A; Testimony.)
4. While Petitioner was sleeping, an Adult Services Worker visited Petitioner's residence and met with Petitioner in Petitioner's bedroom where Petitioner was sleeping. (Testimony.)
5. Upon Petitioner waking, the Adult Services Worker identified herself as Petitioner's home health nurse. Petitioner, confused, indicated he already had a home health nurse and didn't need a second one. (Exhibit A; Testimony.)
6. The Adult Services Worker asked Petitioner if that meant he no longer needed home health services, to which Petitioner replied he didn't need her services anymore. (Exhibit A; Testimony.)
7. On September 19, 2023, the Department sent Petitioner an Advance Negative Action Notice. The notice indicated Petitioner's home help services would be terminated effective September 19, 2023, as a result of Petitioner no longer wanting home help services. (Exhibit A; Testimony.)
8. Shortly after receiving the notice, Petitioner reached out to the Department a couple of times to have the action rescinded due to confusion regarding the circumstances of the closure and miscommunication on behalf of the parties. (Testimony.)
9. On December 8, 2023, the Michigan Office of Administrative Hearings and Rules received from Petitioner, a request for hearing. (Exhibit A.)

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.

Negative Actions Not Requiring 10-Day Notice

The following situations do not require 10-business day notice on negative actions:

- The department has factual confirmation of the death of the client (negative action notice must be mailed to the guardian or individual action on the client's behalf) or death of the caregiver.

Note: Cases should remain open until all appropriate payments have been issued.

- The department receives a verbal or written statement from the client, stating they no longer want or require services, or that they want services reduced.

Note: This information must be clearly documented in the Contacts module of MiAIMS. Written statements from the client must be maintained in the paper case file and documented in the Contacts module.

- The department receives a verbal or written statement from the client that contains information requiring a negative action. The statement must acknowledge the client is aware the negative action is required, and they understand the action will occur.¹

Need For Service

The adult services worker (ASW) is responsible for determining the necessity and level of need for home help services based on all of the following:

- Client choice.
- A completed MDHHS-5534, Adult Services Comprehensive Assessment. An individual must be assessed with at least one activity of daily living (ADL) at a level 3 or greater to be eligible to receive home help services.²

In this case, the Department relied upon work notes from the Adult Services employee who performed the assessment and policy indicating the case should be closed due to Petitioner's request for case closure (Client Choice).

¹ ASM, 150, Notification of Eligibility Determination May 1, 2023, pp 2-4.

² ASM 105, Eligibility Criteria, June 1, 2020, p 3.

The evidence provided however, indicated that more likely than not, the worker performing the assessment did not clearly identify herself, or the reason for her visit; and further that Petitioner was clearly confused at the time of the assessment. Because of this, Petitioner did not make a recognizable and credible declaration. And consequently, the Department can not rely on this as the reason for the case closure.

Consequently, I find sufficient evidence to reverse the Department's actions in this matter.

DECISION AND ORDER

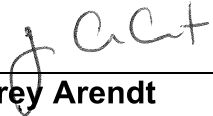
The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department improperly closed Petitioner's HHS case.

IT IS THEREFORE ORDERED THAT:

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

The Department is ordered to rescind the negative action notice in question, perform a new assessment, and issue retroactive benefits if otherwise eligible and qualified.

CA/pe



Corey Arendt
Administrative Law Judge
for Elizabeth Hertel, 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

Via Electronic Mail:

Agency Representative

Emily Piggott
DCH Appeals Section
222 N. Washington Square
Lansing, MI 48909
PiggottE2@michigan.gov

DHHS Department Contact

Michelle Martin
MDHHS
400 S. Pine St., 6th Floor
Lansing, MI 48933
MDHHS-Home-Help-Policy@michigan.gov

DHHS Location Contact

Sherry Reid
MDHHS-Greenview Adult Services District
Wayne County, BSC-4
19340 Greenview Ave., Ste. 200
Detroit, MI 48219
MDHHS-WC-MAHSHearing@michigan.gov

DHHS Department Representative

Mary Carrier
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P.O. Box 30807
Lansing, MI 48909
MDHHS-Appeals@michigan.gov

Via First Class Mail:

Petitioner

[REDACTED]
[REDACTED] MI [REDACTED]

Authorized Hearing Representative

[REDACTED]
[REDACTED] MI [REDACTED]