



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
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: April 30, 2024
MOAHR Docket No.: 24-002603
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 and 42 CFR 431.200 *et seq.*, and upon the Petitioner's request for a hearing.

After due notice, a telephone hearing was held on April 18, 2024. [REDACTED] Petitioner's Aunt and Guardian, appeared on behalf of Petitioner. Lana Karadsheh, Appeals Review Officer, represented the Respondent Department of Health and Human Services (DHHS or Department). Rebecca Fockler, Adult Services Worker (ASW), testified as a witness for the Department.

Exhibits:

Petitioner	None
Department	A – Hearing Summary

ISSUE

Did the Department properly suspend 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. Petitioner is a Medicaid beneficiary who was been approved for HHS through the Department since September 1, 1992. (Exhibit A, p 16).
2. Since 2007 and continuing through February 13, 2024, Petitioner's HHS provider has been [REDACTED] (Exhibit A, page 19; Testimony).

3. On November 10, 2023, a face-to-face review took place. During the review, the parties discussed [REDACTED] poor health and her inability to carry out the full Activity of Daily Living (ADL) and Instrumental Activity of Daily Living (IADL) responsibilities. (Exhibit A, p 21; Testimony.)
4. On January 3, 2024, the Department set Petitioner an Advance Negative Action Notice. The notice indicated the Department was suspending Petitioner's HHS payments effective January 17, 2024, until Petitioner can select a chore provider that can meet her needs. (Exhibit A, p 22; Testimony.)
5. On February 13, 2024, a face-to-face meeting took place between the Department and [REDACTED]. Prior to the meeting, [REDACTED] using a cane, was escorted into the room by her grandson. The meeting was to discuss Petitioner's Adult Protective Services (APS) case and [REDACTED] inability to perform Petitioner's HHS tasks based on her own physical limitations. Continued discussions were had regarding [REDACTED] inability to stand for long periods to shop, cook, or clean and her own need for assistance with Activities of Daily Living (ADL) and Instrumental Activities of Daily Living (IADL). During the meeting, [REDACTED] indicated that while she is forgetful, she is capable of being her own decision maker. (Exhibit A, p 19.)

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 statutes, 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.

With respect to providers of HHS, Adult Service Manual (ASM) 135 states in part:

The Michigan Department of Health and Human Services (MDHHS) administers the Home Help program and provides personal care services to individuals who need hands-on assistance with activities of daily living (ADLs) and assistance with instrumental activities of daily living (IADLs). The items in this section may apply to both individual caregivers and agency providers for MDHHS. For additional policies and procedures regarding Home Help agency providers, see ASM 136, Agency Providers.

CAREGIVER SELECTION

The client has the right to choose his or her Home Help caregiver(s). The client is the employer and may terminate the caregiver's employment at any time. Home Help services are a benefit to the client and earnings for the caregiver.

* * *

CAREGIVER CRITERIA

The determination of a caregiver's criteria is the responsibility of the adult services worker (ASW). Determine the caregiver's ability to meet the following **minimum** criteria during a face-to-face interview with the client **and** the caregiver:

Age

The caregiver must be 18 years and older.

Ability

- To follow instructions and Home Help program procedures.
- To perform the services required.
- To handle emergencies.

Physical Health

The caregiver's health must be adequate to perform the needed services.

Knowledge

The caregiver must know when to seek assistance from appropriate sources in the event of an emergency.

Personal Qualities

The caregiver must be dependable and able to meet job demands.

Criminal History Screen

All Home Help individual caregivers must undergo a criminal history screen prior to providing personal care services.

Note: The MDHHS Provider Enrollment unit, **not** local office staff, conducts criminal history screens for Home Help individual caregivers. Adult services workers **must only** use Law Enforcement Information Network (LEIN) information during an APS investigation. Use of LEIN in any other adult services program is **prohibited**; see SRM 700 and SRM 701.

Training

The individual caregiver must be willing to participate in available training programs if necessary.

Note: The Home Help payment may be terminated if the individual caregiver fails to meet any of the caregiver criteria.¹

Here, Petitioner has been, and continues to be approved, for HHS, but the Department will not allow her guardian to be her home help provider as the current provider has significant health issues that limit their ability to perform the full array of ADL/IADL services deemed medically necessary for Petitioner.

In appealing that action, Petitioner bears the burden of proving by a preponderance of the evidence that the Department erred. Moreover, the undersigned Administrative Law Judge is limited to reviewing the Department's decision in light of the information it had at the time it made the decision.

Given the record in this case, Petitioner has failed to meet that burden; and the Department's decision must therefore be affirmed.

While Petitioner has the right to choose his home help provider, the Department also has the responsibility to determine whether a caregiver meets the applicable criteria; and it does not appear that Petitioner's proposed provider meets the criteria in this case. The evidence indicates the current provider has health issues that limit their ability to perform their own ADL's and IADL's. Furthermore, the fact Petitioner has an open APS case is troubling and indicative that there are problems within Petitioner's home environment.

¹ Adult Services Manual, 135, May 1, 2023, pp 1-3.

ASM 135 requires that a caregiver/provider be able to perform the services required, be dependable, and be able to meet the demands of the job; and, given the history between Petitioner and Petitioner's provider, Petitioner has failed to meet her burden of showing that the Department erred in finding that the proposed provider in this case did not meet the applicable criteria for the client in question and suspending Petitioner's services until she selected a qualified provider.

DECISION AND ORDER

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

IT IS, THEREFORE, ORDERED that:

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

CA/pe



Corey Arendt
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:

Agency Representative

Lana Karadsheh
MDHHS
235 S. Grand Ave.
Lansing, MI 48933
Karadshehl@michigan.gov

DHHS

Kael Meyer
Lake County DHHS
5653 South M-37
Baldwin, MI 49304
MDHHS-Lake-Hearings@michigan.gov

DHHS Department Contact

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

DHHS Department Representative

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

Via First Class Mail:

Petitioner and Authorized Hearing Representative

[REDACTED]
[REDACTED] MI [REDACTED]