



STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

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

MARLON BROWN
DIRECTOR

Date Mailed: October 11, 2024
MOAHR Docket No.: 24-009777
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 and 42 CFR 431.200 *et seq.*, and upon Petitioner's request for a hearing.

After due notice, a telephone hearing was held on October 10, 2024. [REDACTED] Petitioner's daughter, appeared and testified on Petitioner's behalf. Petitioner also testified as a witness on her own behalf. Lana Karadsheh, Appeals Review Officer, represented the Respondent Department of Health and Human Services (DHHS or Department). Nashonne McCants, Adult Services Worker (ASW), testified as a witness for the Department.

During the hearing, the Department submitted an evidence packet that was admitted into the record without objection as Exhibit A, pages 1-78. No other proposed exhibits were submitted.

ISSUE

Did the Department properly decide to terminate 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. Beginning in 2019, Petitioner was approved for HHS through the Department. (Exhibit A, page 10).
2. In the most recent authorization of services, the Department approved Petitioner for HHS through December 31, 2023. (Exhibit A, page 10).

3. On December 18, 2023, the ASW attempted to complete a six-month review with Petitioner, but she was unable to do so. (Exhibit A, page 15; Testimony of ASW).
4. The authorization of HHS, and payments for HHS, ended on December 31, 2023. (Testimony of Petitioner's representative; Testimony of ASW).
5. In early January of 2024, Petitioner's representative reported that Petitioner was in and out of the hospital due to health issues, and they were therefore unable to complete the six-month review. (Exhibit A, page 15).
6. On January 18, 2024, the ASW sent Petitioner a letter stating that a home visit had been scheduled for January 29, 2024. (Exhibit A, page 17).
7. On January 29, 2024, the ASW attempted to complete the home visit, but was unable to do so. (Exhibit A, page 14; Testimony of Petitioner; Testimony of ASW).
8. On February 12, 2024, the Department sent Petitioner written notice that her HHS would be terminated as of February 26, 2024. (Exhibit A, pages 21-22).
9. With respect to the reason for the termination, the notice stated:

The client has not been seen. It is policy that I see my client in order to update this case and put on further payments for the next six months, please call this worker to schedule an appointment.

Exhibit A, page 21

10. The notice specifically provided information on where and how Petitioner could request a hearing in writing if she disagreed with the decision. (Exhibit A, page 22).
11. Petitioner did not subsequently request a hearing with respect to that termination. (Testimony of Petitioner's representative).
12. She and her representative did contact the ASW to report that Petitioner was unable to complete the review because Petitioner was in the hospital. (Testimony of Petitioner's representative).
13. The ASW then indicated that the termination would not be implemented at that time. (Testimony of Petitioner's representative; Testimony of ASW).
14. The ASW also attempted to reschedule a six-month review multiple times, but Petitioner and her representative reported that Petitioner was too sick

to complete one. ((Testimony of Petitioner's representative; Testimony of ASW).

15. On April 19, 2024, the ASW sent Petitioner a letter stating that a home visit had been scheduled for April 29, 2024. (Exhibit A, page 13).
16. On April 29, 2024, the ASW attempted to complete the home visit, but Petitioner reported that she had not received a letter and refused to complete the review. (Exhibit A, page 13; Testimony of Petitioner; Testimony of ASW).
17. On August 30, 2024, the Michigan Office of Administrative Hearings and Rules (MOAHR) received a request for hearing filed by Petitioner in this matter. (Exhibit A, pages 8-9).
18. In that request for hearing, Petitioner and her Authorized Hearing Representative (AHR) stated that Petitioner was disputing the termination of her HHS in January of 2024. (Exhibit A, page 8).
19. On September 23, 2024, the Department sent Petitioner written notice that her HHS were being terminated. (Exhibit A, pages 19-20).
20. With respect to the reason for the termination, the notice stated:

Worker went out to speak with the client however she refused to speak with this worker. The client was verbally abusive to this worker and would not meet. This case is being closed. The client actually lives in [REDACTED] county [sic] now. It should be noted that this case was supposed to be closed in February however as it believed that client was still hospitalized it was not closed. However, now that it is known that the client is no longer hospitalized this case is being closed again as the client refused to speak with this worker.

Exhibit A, page 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.

Regarding reviews of open HHS cases, Adult Services Manual 155 (2-1-2018) states in part:

CASE REVIEWS

Home Help cases must be reviewed every six months.

Requirements for case review must include:

- *A face-to-face contact is required with the client in the home.*
 - Review of client satisfaction with the delivery of planned services and care provided by the caregiver or agency.
 - Follow-up on any absences or hospitalization coming up or since the last home visit.
- *A face-to-face or phone contact must be made with the caregiver or agency provider at each review to verify services are being furnished.*

Note: If contact is made by phone, the caregiver or agency provider must offer identifying information such as date of birth and the last four digits of their social security number. A face-to-face interview in the client's home or local Michigan Department of Health and Human Services (MDHHS) office must take place at the next review.

- A review of the current comprehensive assessment and plan of care.
- Verification of the client's Medicaid eligibility, when Home Help services are being paid.
- Follow-up collateral contacts with significant others such as family, guardians, and friends to assess their role in the plan of care, if applicable.

Documentation

Case documentation for all reviews must include:

- A new face to face contact should be logged as an SOP event type "six-month review" in MiAIMS contact module. The contact should include that the client was in the home and a brief statement of the requirements of the home visit, the nature of the contact and who was present during the home visit.
- Entering the "six-month review" SOP event type face to face contact with the client automatically updates the disposition details on the 360-overview tab.

Note: A face to face contact entry with the client generates a case management billing.

- A review of all MiAIMS modules and tabs with information updated as needed.
- Documented contact details with the Home Help caregiver or agency provider in the contact module on MiAIMS.
- Update new information obtained in the MDHHS-5534, Comprehensive Assessment, modules in MiAIMS.
- The MDHHS-5537, Plan of Care, is automatically updated when areas of concern are identified as an issue in the comprehensive assessment.
- Change in caregivers or agency providers if required.
- Add new authorization for services continuing.
- Send notification if services have been increased or decreased; see: ASM 150 Notification of Eligibility Determination

*ASM 155, pages 1-2
(italics added for emphasis)*

Moreover, regarding case closures, ASM 170 (7-1-2022) states in part:

Home Help cases may be closed due to a number of reasons. The case must have all documentation, including any updated assessment information, and new contacts entered in MiAIMS before the case is closed.

- Case closing information must be entered in MiAIMS.
- Any comments that may prove helpful in the future should be included in the closing summary.

Note: If a new assessment determines the client no longer needs hands-on services for any activities of daily living (ADLs), the adult services worker (ASW) must update the assessment to reflect the change in the client's needs prior to closing the case.

The ASW must generate a DHS-1212, Advanced Negative Action Notice, from MiAIMS and mail to the client or their guardian/designated representative; see ASM 150, Notification of Eligibility.

The payment authorizations to individual caregivers and agency providers must be terminated in MIAIMS.

Note: The adult services worker may choose to suspend payments, and delay case closure, if it appears the situation may be temporary.

* * *

Termination of Home Help Payments

Home Help payments may be terminated and closing procedures initiated, in any of the following circumstances:

- The client fails to meet any of the eligibility requirements.

ASM 170, pages 1-2

Here, the Department terminated Petitioner's HHS pursuant to the above policy and on the basis that the Department was unable to complete the required, face-to-face six-month review with Petitioner.

In appealing that decision, 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.

Here, as a preliminary matter, the Department first argues that Petitioner's request for hearing was untimely and the undersigned ALJ therefore lacked jurisdiction over Petitioner's claim.

The Social Security Act and the federal regulations which implement the Social Security Act require an opportunity for a fair hearing to any recipient who believes the Department may have taken a negative action, such as a termination or denial of HHS, erroneously. See 42 CFR 431.200 *et seq.*

However, the opportunity for a fair hearing is limited by a requirement that the request be made within 90 days of the Department's negative action: "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, it is undisputed that the Department sent a notice of termination with respect to Petitioner's HHS on February 12, 2024 and that Petitioner did not request a hearing in this matter until August 30, 2024, which was well past the 90-day deadline for requesting a hearing regarding the past termination of services.

Nevertheless, it is undisputed that the proposed termination of Petitioner's HHS did not take effect after Petitioner and her representative notified the Department that Petitioner had missed the six-month review due to a hospitalization. Moreover, as it is also undisputed that the ASW informed Petitioner that Petitioner's HHS was being kept open, which it was, the Department essentially rescinded its action and there was no reason for Petitioner to request a hearing at that time.¹

The Department now seeks to terminate Petitioner's services, and given the record and applicable policies, Petitioner has not met her burden of proof and the Department's decision must therefore be affirmed.

As provided above, HHS cases must be reviewed every six months, with a face-to-face contact with the home help client, and it is undisputed that no such review was completed in this case.

It is undisputed that ASW attempted home visits on three separate occasions and Petitioner was either not present or refused to cooperate with a review. Moreover, it is also undisputed that Petitioner and her representative repeatedly declined attempts to schedule a visit.

Petitioner and her representative testified that Petitioner was unable to complete the six-

¹While Petitioner's case was to remain open, the Department did not indicate that payments would resume in the absence of the required six-month review. To the extent Petitioner disputes the lack of payments, her request for appeal is untimely, outside of the ALJ's jurisdiction, and dismissed.

month review due to hospitalizations or health reasons, and they criticized the ASW for both being cold-hearted toward Petitioner's situation and rude during the last attempt at a home visit, which they also testified they had no notice of. Petitioner's representative also testified that the ASW needed to give Petitioner the benefit of the doubt and make an exception to policy.

However, Petitioner's representative failed to identify any exception to ASM 155 and, regardless, the record demonstrates that the ASW did give Petitioner the benefit of the doubt by rescinding the initial termination and leaving Petitioner's case open for months even though the required six-month review had not been completed. Moreover, the ASW also credibly described how she attempted to work with Petitioner to get the necessary review done during that period while Petitioner did not make herself available at any time when she was out of the hospital, and outright refused to complete the home visit when there was an opportunity to do so.

Accordingly, for the reasons discussed above, the termination of Petitioner's HHS must be affirmed.

DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, decides that the Department properly terminated Petitioner's HHS.

IT IS, THEREFORE, ORDERED that:

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

SK/sj



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

PROOF OF SERVICE

I certify that I served a copy of the foregoing document upon all parties, to their last known addresses in the manner specified below, this 11th day of October 2024.

S. James

S. James
**Michigan Office of Administrative
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