

GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: January 14, 2020
MOAHR Docket No.: 19-012258
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jeffrey Kemm

DECISION AND ORDER

Upon the Petitioner's November 26, 2019, request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250; 42 CFR 438.400 to 438.424, and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on January 14, 2020, from Lansing, Michigan.

Petitioner, [REDACTED], appeared with her daughter, [REDACTED]. Respondent, Department of Health and Human Services (Department), had Florence Scott-Emuakpor, Appeals Review Officer, appear as its representative. The Department had two witnesses: Brenda Thomas, Adult Services Worker, and Leslie Sims, Adult Services Supervisor. Neither party had any additional witnesses.

One exhibit was admitted into evidence during the hearing. A 26-page packet of documents provided by the Department was admitted collectively as the Department's Exhibit A.

ISSUE

Did the Department properly deny Petitioner's request for 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 requested HHS from the Department.
2. On September 4, 2019, Petitioner's medical provider completed a medical needs form which certified that Petitioner had a medical need for assistance.

3. On November 7, 2019, the Department met with Petitioner face-to-face in her home to complete an assessment. Petitioner was present with her husband, Nathaniel Banner. Mr. Banner reported being separated but living in Petitioner's home and providing care for her. The Department observed Petitioner move about her home without assistance, and the Department observed Petitioner move her limbs without any apparent discomfort. The Department asked Petitioner about her need for assistance, and Petitioner indicated that she needed assistance with bathing, dressing, housework, laundry, meal preparation, and shopping.
4. Based on the Department's assessment, the Department determined (a) Petitioner did not have a need for hands-on assistance with any activities of daily living (ADL's), and (b) Petitioner had a responsible relative who was able and available to provide care for her.
5. On November 8, 2019, the Department mailed a negative action notice to Petitioner to notify her that her request for HHS was denied because she did not have a need for hands-on assistance with at least one ADL and she had a responsible relative.
6. On November 26, 2019, Petitioner requested a hearing to dispute the Department's decision to deny her request for HHS.

CONCLUSIONS OF LAW

The Medical Assistance Program (MA) 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 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 health professional and may be provided by individuals or by private or public agencies.

In order to be eligible for HHS, an individual must have a need for service, based on a comprehensive assessment indicating a need for hands-on assistance with at least one activity of daily living (ADL) or a need for complex care. ASM 120 (February 1, 2019), p. 3. Those activities known as ADL's are eating, toileting, bathing, grooming, dressing, transferring, and mobility. *Id.* at 2. Complex care includes such care as catheters, bowel programs, specialized skin care, suctioning, range of motion exercises, wound care, respiratory treatments, and injections. *Id.* at 4.

In this case, the Department completed a comprehensive assessment following Petitioner's request for HHS. The Department met face-to-face with Petitioner in her home to complete the assessment. During the assessment, the Department observed

Petitioner in her home and determined that Petitioner did not have a need for hands-on assistance with any ADL's. Although Petitioner indicated during the assessment that she needed assistance with dressing and bathing, the Department determined that Petitioner did not need hands-on assistance with those activities because the Department observed Petitioner move about without assistance and move her limbs without any apparent discomfort.

Petitioner disputed the Department's determination that she did not need hands-on assistance with any ADL's. Petitioner testified that she needs assistance with washing her hair because she cannot tip her head back to rinse her head. However, Petitioner did not present any evidence to corroborate her testimony, and Petitioner did not dispute that she is able to move her limbs without any apparent discomfort. Thus, Petitioner did not present sufficient evidence to establish that the Department improperly determined that she did not have a need for hands-on assistance with at least one ADL.

The Department also determined that Petitioner had a responsible relative living in her home. When a HHS recipient has a responsible relative, HHS may only be authorized for the services or times when the responsible relative is unavailable or unable to provide care. ASM 130 (April 1, 2018), p. 2. A responsible relative is an individual's spouse or a parent of an unmarried child under age 18. ASM 120, p. 7. Unavailable means absence from the home for an extended period due to employment, school or other legitimate reasons. *Id.* Unable means the responsible person has disabilities of his own which prevent him from providing care, which are documented and verified by a medical professional. *Id.*

The Department observed Petitioner's husband at the assessment, and the Department spoke with him. Petitioner's husband asserted that he was living in Petitioner's home and that he was caring for Petitioner. Based on the information the Department obtained during the assessment, the Department determined that Petitioner had a responsible relative and that HHS could not be authorized even if she had a need for hands-on assistance with ADL's.

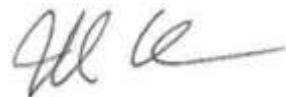
Petitioner disputed that her husband was living with her. However, Petitioner was unable to provide a credible explanation for why he was present at the assessment and holding himself out as her caregiver. Further, Petitioner did not dispute that he was able and available. Thus, Petitioner did not present sufficient evidence to establish that the Department improperly determined that she had a responsible relative who was able and available.

In summary, the Department's decision to deny Petitioner's request for HHS was supported by its findings at the comprehensive assessment, and Petitioner did not present sufficient evidence to establish that the Department did not complete its assessment in accordance with its policies and the applicable law. Thus, I must uphold the Department's decision.

DECISION AND ORDER

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

IT IS ORDERED THAT the Department's decision is **AFFIRMED**.



JK/dh

Jeffrey Kemm
Administrative Law Judge
for Robert Gordon, 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

DHHS -Dept Contact

Michelle Martin
Capitol Commons
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Lansing, MI 48909

DHHS-Location Contact

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Petitioner

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