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GOVERNOR

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

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DIRECTOR

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Date Mailed: March 17, 2020
MOAHR Docket No.: 20-000592
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Jeffrey Kemm

DECISION AND ORDER

Upon the Petitioner's February 4, 2020, 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 March 17, 2020, from Lansing, Michigan.

Petitioner, ██████████, appeared with his provider, ██████████. Respondent, Department of Health and Human Services (Department), had John Lambert, Appeals Review Officer, appear as its representative. The Department had one witness, Darlisha Vincent, Adult Services Specialist. Neither party had any additional witnesses.

One exhibit was admitted into evidence during the hearing. A 48-page packet of documents provided by the Department was admitted collectively as the Department's Exhibit A.

ISSUE

Did the Department properly terminate Petitioner's Home Help Services (HHS) effective January 28, 2020?

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 was a HHS recipient.
2. Petitioner was approved for HHS after the Department determined that Petitioner had a need for hands-on assistance with grooming.

3. The Department approved HHS hours for Petitioner for the following activities: grooming, housework, laundry, meal preparation, shopping for food and medications, and travel for such shopping.
4. On January 7, 2020, the Department met with Petitioner face-to-face in his home to complete a six-month review. Petitioner's provider was not present. During the visit, the Department asked Petitioner if he had any changes to report, and Petitioner reported that he did not have any changes.
5. On January 14, 2020, the Department mailed a negative action notice to Petitioner to notify him that his HHS was going to be suspended effective January 28, 2020, because the Department had not had contact with Petitioner's provider.
6. On January 22, 2020, the Department met with Petitioner's provider. When the Department met with Petitioner's provider, the Department asked her what activities she assists Petitioner with. Petitioner's provider responded that she assists with housekeeping and shopping. Based on Petitioner's provider's response, the Department determined that Petitioner did not have a need for hands-on assistance with any activities of daily living (ADL's).
7. On January 23, 2020, the Department mailed a negative action notice to Petitioner to notify him that his HHS were going to be terminated effective January 28, 2020, because he did not have a need for hands-on assistance with at least one ADL.
8. On February 4, 2020, Petitioner requested a hearing to dispute the Department's decision.

CONCLUSIONS OF LAW

In order to be eligible for HHS, an individual must have a need for services, 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.

The comprehensive assessment is the Department's primary tool for determining a client's need for services. *Id.* at 1. Although a medical professional may certify a client's need for services, it is the Department who determines whether there is a need for services through its comprehensive assessment. ASM 115 (January 1, 2018), p. 2. During the assessment, the Department documents a client's abilities and needs in order to determine the client's ability to perform activities. ASM 120 at 2. The

assessment must be updated as often as necessary, but minimally at the six-month review. *Id.* at 1.

Here, the Department completed Petitioner's six-month review and determined that he no longer required HHS. The Department made its determination after it spoke with Petitioner's provider and she indicated that she was only assisting Petitioner with housekeeping and shopping.

During each six-month review, the Department is required to meet with the client face-to-face in his home and review the comprehensive assessment. ASM 155 (February 1, 2019), p. 1. The Department is also required to contact the client's provider to verify that services are being furnished. *Id.* at 2.

In this case, the Department contacted Petitioner's provider, but the Department did not establish that it reviewed the comprehensive assessment with Petitioner. The Department did not present sufficient evidence to establish that it asked Petitioner about his ADL's, IADL's, and complex care needs. Rather, the evidence presented by the Department established that the Department simply asked Petitioner whether he had any changes to report, and asking only about changes does not amount to a review of the comprehensive assessment.

Since the Department did not review the comprehensive assessment as required by ASM 155, the Department's six-month review was not completed in accordance with policy. Thus, the termination that resulted from the six-month review was not proper. Therefore, the Department's decision is reversed.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department did not properly terminate Petitioner's HHS.

IT IS ORDERED THAT the Department's decision is **REVERSED**. The Department shall begin to implement this decision within 10 days.

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

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