

GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

Date Mailed: May 18, 2020
MOAHR Docket No.: 20-001187
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jeffrey Kemm

DECISION AND ORDER

Upon the Petitioner's February 20, 2020, hearing request, 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 May 12, 2020.

Petitioner, [REDACTED], appeared and represented herself. Petitioner had one witness, [REDACTED], Petitioner's provider. Respondent, Department of Health and Human Services (Department), had Theresa Root, Appeals Review Officer, appear as its representative. The Department had two witnesses: Janelle Harris, Adult Services Worker, and Nicki Gagne, Adult Services Worker. Neither party had any additional witnesses.

One exhibit was admitted into evidence during the hearing. A 29-page packet of documents provided by the Department was admitted collectively as the Department's Exhibit A.

ISSUE

Did the Department properly reduce Petitioner's Home Help Services (HHS) effective February 1, 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 is a HHS recipient.
2. On December 19, 2019, the Department met with Petitioner and her provider, Nina Dawkins, in Petitioner's home to complete a review. During the review, the

Department asked Petitioner about her need for services, and the Department observed Petitioner. Petitioner told the Department that she drives to the pharmacy and dollar store two times per week to pick up medications and shop; Petitioner told the Department that it takes her approximately 20 minutes each time to travel for shopping. Petitioner told the Department that her provider assists her with bathing seven days per week for approximately 20 minutes each time. Petitioner told the Department that her provider assists her with dressing five days per week. Petitioner told the Department that her provider assists her with grooming seven days per week. Petitioner told the Department that her provider assists her with housework five days per week. Petitioner told the Department that her provider assists her with laundry two days per week. Petitioner told the Department that her provider assists her with medications three days per week. Petitioner told the Department that her provider assists her with meal preparation four days per week for approximately 35 minutes each time. The Department observed Petitioner move about her home without assistance, and the Department observed Petitioner reach and grab items without assistance.

3. The Department reviewed Petitioner's authorized hours after the assessment and determined that Petitioner's hours needed to be adjusted to accurately reflect the time that she needs assistance.
4. The Department determined that Petitioner's time for bathing, dressing, housework, meal preparation, and medications needed to be reduced to reflect the time that she needs assistance with those activities. The Department determined that Petitioner's time for grooming and shopping needed to be increased to reflect the time that she needs assistance with those activities. The Department's changes resulted in a net reduction of approximately 26 hours per month.
5. On December 23, 2019, the Department mailed a negative action notice to Petitioner to notify her that her HHS hours were going to be reduced to 43 hours and 4 minutes per month, effective February 1, 2020.
6. On February 20, 2020, Petitioner requested a hearing to dispute the Department's decision.
7. Petitioner disagrees with the Department's reduction because she believes that she needs all the hours that she had been granted. Petitioner specifically disagrees with the time approved for bathing because she sometimes has to soak for extended times to relieve her ailments. Petitioner's provider assists Petitioner with bathing, but Petitioner's provider does not provide assistance during Petitioner's extended soaks.

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.

The comprehensive assessment is the Department's primary tool for determining a client's need for services. ASM 120 (February 1, 2019), p. 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. When the Department determines that a client has a need for services, the Department allocates time for each task indicating a need for hands-on assistance. *Id.* at 5. The assessment must be updated at least every six months. *Id.* at 1.

The amount of time allocated to each task is determined based on interviews with the client and the client's provider, observation of the client's abilities, and use of the reasonable time schedule (RTS) as a guide. *Id.* at 5. The Department must assess each task according to the average time and frequency required for its completion. *Id.* In this case, the Department met with Petitioner and asked her about her need for services; the Department then adjusted her hours to reflect the amount that Petitioner described. This resulted in a net reduction of approximately 26 hours per month, which Petitioner disputes.

Petitioner did not present sufficient evidence to establish that the Department's reduction was improper. Petitioner asserted in part that she thought the reduction was improper because it takes her longer to bathe than what the Department authorized. It may take Petitioner longer to bathe, but there is no evidence that it takes Petitioner's provider any longer to assist Petitioner than what the Department authorized. For example, Petitioner testified that she sometimes soaks for extended times, but her provider does not provide assistance during these soaks; Petitioner's provider provides assistance before and after the extended soaks.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly reduced Petitioner's HHS effective February 1, 2020.

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
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DHHS

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Petitioner

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Agency Representative

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