

GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED], MI

Date Mailed: May 19, 2020
MOAHR Docket No.: 20-001424
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 May 12, 2020. [REDACTED], Petitioner's sister-in-law and caretaker, appeared and testified on Petitioner's behalf. [REDACTED], a representative from the provider agency Petitioner uses, also testified as a witness for Petitioner. Allison Pool, Appeals Review Officer, represented the Respondent Department of Health and Human Services (DHHS or Department). Jennifer Raleigh, Adult Services Worker (ASW), testified as a witness for the Department, with Leigha Burghdoff, Appeals Review Officer, also present.

Petitioner did not submit any exhibits during the hearing. The Department provided one exhibit/evidence packet that was admitted into the record as Exhibit A, pages 1-31.

ISSUE

Did the Department properly 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. Petitioner is a [REDACTED] ([REDACTED]) year-old Medicaid beneficiary who was approved for HHS in April of 2019. (Exhibit A, page 9).
2. Petitioner does not have a legal guardian or a representative with a power of attorney. (Testimony of Petitioner's representative).
3. On October 2, 2019, the ASW sent Petitioner written notice of a home visit

and assessment scheduled for November 8, 2019 between 11:00 a.m. and 2:00 p.m. (Exhibit A, page 13).

4. On November 8, 2019, the ASW attempted to complete the scheduled home visit and assessment, but there was no answer when she knocked on the door. (Exhibit A, page 13; Testimony of ASW).
5. The ASW also telephoned the number she had for Petitioner, but the telephone number was not working. (Testimony of ASW).
6. On November 18, 2019, the ASW sent Petitioner a written notice stating that Petitioner had missed the scheduled November 8, 2019 visit; another home visit and assessment has been scheduled for November 29, 2019 between 8:00 a.m. and 10:00 a.m.; and that, if Petitioner and her provider were not present for the rescheduled visit, Petitioner's HHS would be terminated. (Exhibit A, page 12).
7. On November 29, 2019, the ASW attempted to complete the scheduled home visit and assessment, but again unsuccessful. (Exhibit A, page 12; Testimony of ASW).
8. On December 2, 2019, Petitioner's HHS case was closed, and her services were terminated. (Exhibit A, page 9).
9. On February 28, 2020, the Michigan Office Administrative Hearings and Rules (MOAHR) received the request for hearing filed in this matter regarding the termination of Petitioner's HHS. (Exhibit A, pages 6-8).
10. Petitioner reapplied for HHS in February of 2020, and her new application was subsequently approved. (Exhibit A, pages 15-16; Testimony of Petitioner's representative).

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.

Here, the Department terminated, Petitioner's HHS on the basis that Petitioner had failed to appear for a required redetermination.

Regarding case reviews, Adult Services Manual (ASM) 155 (2-1-2019) states in part:

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

Here, Petitioner's HHS were terminated pursuant to the above policies and on the basis that the Department was unable to complete the required case review.

In support of that decision, the ASW testified that a face-to-face review with a client is required every six months per the above policy, but that she was not able to complete such a review in this case because Petitioner did not appear for either of the scheduled

home visits. She also testified that she sent written notice for both visits, and that she also telephoned Petitioner at the time of the first scheduled review.

In response, Petitioner's representative testified that Petitioner cannot read the English language and is not allowed to open the door when people knock. Petitioner's representative also testified that the representative gets all of Petitioner's mail and checks the mailbox daily, but that no notice of scheduled home visits or termination were ever received. She further testified that, due to Petitioner's language barriers, the ASW needs to call Petitioner's representative prior to any home visit. Petitioner's representative also testified that Petitioner does not have a legal guardian or anyone with a power of attorney with respect to her.

The representative from the provider agency Petitioner uses testified regarding difficulties in contacting the workers assigned to Petitioner's case and a Department Supervisor when trying to contact them about missing payments or reapplying for HHS after the termination.

Petitioner bears the burden of proving by a preponderance of the evidence that the Department erred in terminating her HHS. Moreover, the undersigned Administrative Law Judge is limited to reviewing the Department's decision in light of the information that was available at the time the decision was made.

Given the available information and applicable policies in this case, Petitioner has failed to meet that burden of proof and the Department's decision must be affirmed. It is undisputed that the ASW was unable to complete the required review and, consequently, Petitioner no longer met the requirements for HHS at the time her services were terminated. Moreover, while Petitioner's representative claims that it was the fault of Petitioner's ASW that the required reassessment did not occur, because Petitioner never received notice of either of the scheduled home visits, and that Petitioner should therefore not be penalized, the undersigned Administrative Law Judge does not find that argument to be persuasive. The ASW credibly testified that she sent written notices to Petitioner at the correct address for both scheduled visits, in addition to telephoning Petitioner at the time of the first scheduled visit, and she was not required to directly contact Petitioner's representative, as the representative asserts, given that Petitioner does not have a legal guardian or power of attorney. Additionally, Petitioner's witnesses' testimony about difficulties contacting the Department are unsupported and mostly irrelevant, as they primarily addressed Petitioner's subsequent application in February of 2020.

Petitioner was reapproved for services following her reapplication, but that does not mean that the termination of services in this case was improper and, based on the information available at the time of that decision, Petitioner has failed to meet her burden of proving that the Department erred when terminating Petitioner's HHS.

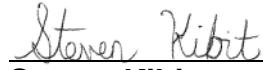
DECISION AND ORDER

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/sb



Steven Kibit
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
6th Floor
Lansing, MI
48909

DHHS

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Authorized Hearing Rep.

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