

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: April 22, 2020
MOAHR Docket No.: 20-001500
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jeffrey Kemm

DECISION AND ORDER

Upon the Petitioner's March 3, 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 April 21, 2020.

Petitioner's authorized hearing representative, [REDACTED], appeared on Petitioner's behalf. Respondent, Department of Health and Human Services (Department), had Allison Pool, Appeals Review Officer, appear as its representative. The Department had one witness: Tria Sparks, Adult Services Worker. Neither party had any additional witnesses.

One exhibit was admitted into evidence during the hearing. A 60-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 January 9, 2020, the Department met with Petitioner and his provider, Barbara Jenkins, in Petitioner's home to complete a six-month review. During the review, the Department asked Petitioner's provider about Petitioner's need

for services. Specifically, the Department asked Petitioner's provider what assistance Petitioner required for the task of eating. Petitioner's provider responded that she has to cut up his food, place food on a utensil, hand the utensil to Petitioner, and then monitor Petitioner. In response, the Department advised that petitioner's HHS time for the task of eating would be reduced because the Department did not pay for monitoring.

3. The Department reduced Petitioner's HHS time for the task of eating from 30 minutes per day to 3 minutes per day. The Department approved 3 minutes per day because Petitioner's provider has to cut up Petitioner's food. The Department did not approve any time for placing Petitioner's food on utensils for him.
4. On January 24, 2020, the Department mailed a negative action notice to Petitioner to notify him that his HHS was going to be reduced effective February 1, 2020, due to a decrease in the time approved for the task of eating.
5. On March 3, 2020, Petitioner requested a hearing to dispute the reduction of 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.

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 reduced Petitioner's HHS time for the task of eating from 30 minutes per day to 3 minutes per day. The Department made this reduction because the Department determined that the only covered activity related to eating was cutting up Petitioner's food. However, Petitioner's provider, Barbara Jenkins, testified that she advised the Department at the six-month review that she cuts up Petitioner's food and places it on utensils for Petitioner. The Department did not rebut this testimony. Thus, I must find that the Department was advised at the assessment that, in addition to having his food cut up, Petitioner required his food to be placed on utensils. Helping with the use of utensils is a hands-on activity for the task of eating. ASM 121 (August 1, 2018), p. 1. The Department did not allocate any time for this activity when it reduced his time for eating. Thus, the Department did not properly determine the HHS time for the task of eating when the Department reduced Petitioner's time for eating.

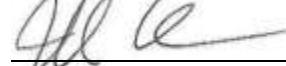
For these reasons, the Department did not properly reduce Petitioner's HHS effective February 1, 2020. The Department must redetermine Petitioner's HHS time for the task of eating consistent with this decision.

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 reduce Petitioner's HHS effective February 1, 2020.

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

Michelle Martin
Capitol Commons, 6th Floor
Lansing, MI 48909

DHHS Department Rep.

M. Carrier
Appeals Section
PO Box 30807
Lansing, MI 48933

DHHS

Pam Farnsworth
903 Telegraph
Monroe, MI 48161

Agency Representative

Allison Pool
222 N Washington Square, Suite 100
Lansing , MI 48933

Authorized Hearing Rep.

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

Petitioner

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