



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: June 4, 2020
MOAHR Docket No.: 20-002229
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Jeffrey Kemm

DECISION AND ORDER

Upon the Petitioner's March 24, 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; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on June 2, 2020.

Petitioner's authorized hearing representative, ██████████, appeared with Petitioner's mother/caretaker, ██████████, 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, Labrenia Glasper, Adult Services Specialist. Neither party had any additional witnesses.

One exhibit was admitted into evidence during the hearing. A 41-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 January 13, 2020, Petitioner's medical provider certified that Petitioner had a medical need for assistance.

3. On February 24, 2020, the Department met with Petitioner face-to-face in her home to complete a comprehensive assessment. Petitioner was present with her mother/caretaker, [REDACTED]. The Department asked Petitioner and her mother/caretaker what activities she needed assistance with, and Petitioner's mother/caretaker responded that she has to tell Petitioner what to do. Neither Petitioner nor her mother/caretaker described a need for hands-on assistance or complex care, and the Department did not observe a need for hands-on assistance or complex care.
4. Based on the Department's assessment, the Department determined that Petitioner did not need hands-on assistance with any ADL's and that she did not have any complex care needs.
5. On February 27, 2020, 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.
6. On March 24, 2020, 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 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.

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 asked Petitioner about her need for assistance. Based on the Department's observations and the information the Department obtained when asking about Petitioner's need for assistance, the Department determined that Petitioner was not eligible for HHS because she did not have a need for hands-on assistance with any ADL's or a need for complex care. The Department's determination was consistent with the information that Petitioner's mother/caretaker provided to the Department at the assessment when she said that she has to tell Petitioner what to do; telling someone what to do does not amount to hands-on assistance.

Petitioner did not present sufficient evidence to establish that the Department did not act in accordance with its policies and the applicable law. Although Petitioner's mother/caretaker testified that Petitioner's condition has continued to deteriorate and Petitioner now requires hands-on assistance, the issue is not whether Petitioner currently needs hands-on assistance; the issue is whether the Department properly determined that Petitioner did not meet the requirements to be eligible for HHS when it denied Petitioner's request for HHS on February 27, 2020. The Department's assessment supported the Department's determination at the time, and Petitioner did not present any evidence to establish that the assessment was not completed properly. Therefore, I must find that the Department properly denied Petitioner's request for HHS.

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
6th Floor
Lansing, MI 48909

DHHS-Location Contact

Sherry Reid
Oakman Adult Services
3040 W. Grand Blvd., Suite L450
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DHHS Department Rep.

M. Carrier
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Agency Representative

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Authorized Hearing Rep.

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

Petitioner

[REDACTED]
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