

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: August 12, 2020
MOAHR Docket No.: 20-004549
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jeffrey Kemm

DECISION AND ORDER

Upon the Petitioner's July 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 August 11, 2020.

Petitioner, [REDACTED], appeared and represented himself. Respondent, Department of Health and Human Services (Department), had John Lambert, Appeals Review Officer, appear as its representative. The Department had one witness, Renata Back, Adult Services Specialist. Neither party had any additional witnesses.

One exhibit was admitted into evidence during the hearing. A 53-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 July 10, 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. In September 2019, the Department met with Petitioner face-to-face to complete an assessment. During the assessment, the Department observed Petitioner in his home.

3. On June 11, 2020, the Department contacted Petitioner by phone to complete a six-month assessment. The Department did not meet with Petitioner face-to-face due to the coronavirus pandemic. The Department asked Petitioner about his abilities and his need for assistance. The Department asked Petitioner about his mobility, and Petitioner indicated that he is able to move about his home with his leg brace and a cane. The Department asked Petitioner about his transfers, and Petitioner indicated that he is able to transfer independently.
4. After the Department spoke with Petitioner, the Department contacted Petitioner's provider to discuss Petitioner's abilities and his need for assistance. The Department asked Petitioner's provider about Petitioner's mobility, and Petitioner's provider indicated that she does not assist Petitioner with his mobility because he is able to get around his home on his own. The Department also asked Petitioner's provider about Petitioner's transfers, and Petitioner's provider indicated that she does not assist Petitioner with his transfers. Petitioner's provider further stated that she only assists Petitioner when she is available since she has a job in addition to caring for Petitioner.
5. The Department reviewed Petitioner's authorized hours after the assessment and determined that Petitioner's hours needed to be adjusted to accurately reflect the activities that he needs assistance with.
6. The Department determined that Petitioner's time for mobility needed to be reduced, Petitioner's time for transfers needed to be removed, and Petitioner's time for travel for shopping needed to be increased. The Department's changes resulted in a net reduction of approximately 5 hours and 30 minutes per month.
7. On June 26, 2020, the Department mailed a negative action notice to Petitioner to notify him that his HHS hours were going to be reduced effective July 10, 2020.
8. On July 20, 2020, Petitioner requested a hearing to dispute the Department's decision.

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 (June 1, 2020), 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 (June 1, 2020), 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 by phone and asked him about his need for services. The Department also met with Petitioner's provider by phone and asked her about Petitioner's need for services. The Department then adjusted Petitioner's hours to reflect the services described by Petitioner and his provider. This resulted in a net reduction of approximately 5 hours and 30 minutes per month, which Petitioner disputes.

Petitioner did not present sufficient evidence to establish that the Department's reduction was improper. Although Petitioner disagreed with the Department's decision to reduce his time for mobility and transfers, Petitioner did not present sufficient evidence to establish that the Department's decision to reduce these activities was contrary to policy.

Based on the evidence presented, the Department reasonably concluded that Petitioner did not need hands-on assistance with mobility and transfers in his home. Petitioner testified that he is able to move about his home with his leg brace on, although it causes him discomfort. Petitioner also testified that he is able to get up from a seated or lying position and back down. This is consistent with the information the Department obtained from Petitioner's provider. Since Petitioner is able to move about his home and get up and down on his own, Petitioner does not require hands-on assistance with mobility or transfers. Therefore, the Department's decision to reduce Petitioner's time for these activities was proper.

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 July 10, 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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