

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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[REDACTED] MI [REDACTED]

Date Mailed: April 29, 2021
MOAHR Docket No.: 21-001475
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jeffrey Kemm

DECISION AND ORDER

Upon the Petitioner's March 26, 2021, 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 April 27, 2021.

Petitioner, [REDACTED], appeared and represented himself. Respondent, Department of Health and Human Services (Department), had Theresa Root, Appeals Review Officer, appear as its representative. The Department had one witness, Jeffrey Love, Case Manager. Neither party had any additional witnesses.

One exhibit was admitted into evidence during the hearing. A 27-page packet of documents provided by the Department was admitted collectively as the Department's Exhibit A.

ISSUE

Whether the Department properly suspended Petitioner's Home Help Services (HHS), effective April 1, 2021?

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. Petitioner is married but separated from his spouse.
3. Since approximately 2015, Petitioner's spouse has been his HHS caregiver.

4. Petitioner's case manager prior to 2017 documented that Petitioner's caregiver was his sister.
5. In 2017, Petitioner's case manager changed to Jeffrey Love.
6. Mr. Love reviewed Petitioner's case notes and believed that Petitioner's caregiver was his sister based on the information in the case notes.
7. Mr. Love went to Petitioner's residence for a face-to-face assessment, and while he was there, he asked where Petitioner's caregiver was. Mr. Love asked Petitioner where his caregiver was by asking, "where's your sister?" Petitioner did not correct Mr. Love when he referred to Petitioner's caregiver as Petitioner's sister.
8. Mr. Love subsequently discovered that Petitioner was married and that his caregiver was his spouse.
9. When Mr. Love discovered that Petitioner's caregiver was his spouse, Mr. Love initiated the suspension of Petitioner's HHS for a suspected intentional program violation.
10. On March 18, 2021, the Department mailed an advance negative action notice to Petitioner to notify him that his HHS were going to be suspended, effective April 1, 2021, because the Department suspected an intentional program violation.
11. On March 26, 2021, Petitioner requested a hearing to dispute the suspension.

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 this case, Petitioner is disputing the Department's decision to suspend his HHS. The Department suspended Petitioner's HHS because it suspected that Petitioner committed an intentional program violation. The Department suspected that Petitioner committed an intentional program violation because it suspected that he misrepresented his spouse as his sister to get HHS payments for his spouse. The issue here is whether the Department's suspension was proper.

A spouse cannot be paid for providing services for her spouse. ASM 135 (June 1, 2020), p. 1. Petitioner acknowledged that his caregiver was his spouse and that he received HHS payments for the care she provided. Thus, it is undisputed that Petitioner received HHS payments that he should not have received. However, Petitioner disputes that he misrepresented his spouse as his sister to get HHS payments for his spouse.

An intentional program violation occurs when a HHS recipient has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing, or preventing reduction of program benefits or eligibility. ASM 166 (October 1, 2020), p. 1. There are three requirements for an intentional program violation: (1) the HHS recipient intentionally failed to report information or gave incomplete or inaccurate information needed to make a correct benefit determination; (2) the HHS recipient was clearly instructed regarding his or her reporting responsibilities to the Department; and (3) the HHS recipient had no apparent physical or mental impairment that limited his or her understanding or ability to fulfill his reporting responsibilities. *Id.*

Based on the evidence presented, the Department did not have reason to believe that Petitioner committed an intentional program violation. Although the Department presented evidence to establish that it was documented in Petitioner's case notes that his caregiver was his sister, and Petitioner did not correct the Department when the Department referred to his caregiver as his sister during a home visit, the Department's evidence was insufficient to establish that Petitioner committed a misrepresentation to obtain HHS. Importantly, Petitioner testified that he was never told that his spouse could not be his caregiver, and the Department did not present any evidence to the contrary. Thus, there was no evidence to establish that Petitioner knew his spouse could not be his caregiver. Therefore, even if Petitioner misrepresented his spouse as his sister, there was no evidence that Petitioner was knowingly committing a misrepresentation to establish, maintain, or prevent the reduction of his HHS.

Since the Department did not have credible evidence that Petitioner was knowingly committing a misrepresentation to establish, maintain, or prevent the reduction of his HHS, the Department improperly suspended Petitioner's HHS. Therefore, the Department's decision to suspend Petitioner's HHS is reversed. Petitioner may continue to receive HHS, but Petitioner's spouse cannot continue to be his provider; Petitioner will have to obtain a new provider.

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 suspend Petitioner's HHS, effective April 1, 2021.

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 Elizabeth Hertel, 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

Kimberly Kornoelje
121 Franklin SE
Grand Rapids, MI 49507

DHHS Department Rep.

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

Agency Representative

Theresa Root
222 N Washington Sq
Suite 100
Lansing, MI 48933

Petitioner

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