



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: January 25, 2022
MOAHR Docket No.: 21-003993
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Corey Arendt

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; 42 CFR 431.200 to 431.250; and 42 CFR 438.400 to 438.424, upon the Petitioner's request for a hearing.

After due notice, a hearing was held on December 9, 2021, and continued on January 4, 2022. Jay Zelenock, Attorney, appeared on behalf of the Petitioner. Stephanie Service, Assistant Attorney General, and Erin Harrington, Assistant Attorney General, appeared on behalf of Respondent, the Department of Health and Human Services (Department).

Witnesses:

Petitioner	[REDACTED]
Respondent	Lori Brown Angela Clymer Brandi Fitzgibbon Traci Doran

Exhibits:

Petitioner	1. Respondent Comprehensive Assessment 7/13/20 2. Circuit Court Order 8/11/20 3. Circuit Court Order 3/31/21 4. Adverse Benefit Determination 6/1/21 5. Clinical Assessment 6/22/21
Respondent	A. Respondent Hearing Brief B. Respondent Motion for Summary Disposition C. Hearing Summary

ISSUE

Did the Department fail to assist Petitioner in acquiring Home Help Services (HHS) staff?

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 Medicaid beneficiary that resides in an area with only one HHS agency provider. (Exhibit C; Testimony.)
2. For many years, Petitioner has had difficulty procuring and hiring HHS staff as Petitioner resides in an area with few providers. (Exhibit C; Testimony.)
3. On July 26, 2018, an employee of Northern Great Lakes CMH, contacted Respondent and indicated Petitioner will be having difficulty finding coverage on the weekends as one of the providers will no longer be working on Saturday and Sunday. (Exhibit C.)
4. On July 27, 2018, [REDACTED], an employee of respondent, replied to the July 26, 2018, question in writing stating: "I checked with two agencies I work with and neither have enough people that are willing to work weekends, the ones that will are already booked. We are not allowed to **recommend individuals**." (Exhibit C.)
5. On February 26, 2020, a 6-month review took place. During the assessment, Petitioner's Adult Services Worker (ASW) indicated to Petitioner, that her current worker might be her last option for caregivers and that she risked placement. (Exhibit C.)
6. On April 3, 2020, Petitioner's ASW recommended Petitioner make a "solid back up plan" as they never know when agencies will close their doors and it is better to be prepared. (Exhibit C.)
7. On June 8, 2020, a Microsoft "TEAMS" meeting took place to address Petitioner's current evaluation and discussed the need to create a safety plan for Petitioner "due to all the APS referrals coming in due to lack of caregivers". (Exhibit C.)
8. On June 10, 2020, Petitioner's ASW sent an email discussing safety planning and the need to create one as soon as possible. (Exhibit C.)
9. On June 12, 2020, Petitioner's ASW sent a text message to Petitioner indicating Petitioner was responsible for hiring people to provide care and that Respondent just lost the last agency they had for Home Help. Petitioner was advised to call

the Provider hotline to get a list of caregiver's names on file with CHAMPS. Petitioner's ASW remarked it was not the ASW's responsibility or APS' responsibility to locate a caregiver. (Exhibit C.)

10. On June 15, 2020, Petitioner's ASW sent Petitioner a text message indicating Petitioner was responsible for locating a caregiver and that the one she had mentioned in May was no longer available. The ASW recommended Petitioner to call the Provider hotline. (Exhibit C.)
11. Later, on June 15, 2020, Petitioner's ASW participated in a Microsoft TEAMS meeting with Petitioner and other individuals. During the meeting, Petitioner's CLS provider indicated they no longer would be able to provide services to Petitioner as they were having a difficult time trying to locate caregivers. During the meeting, Petitioner's ASW indicated Petitioner might want to consider going into placement or moving out of the county. (Exhibit C.)
12. On May 27, 2021, a 6-month review took place. During the review, Petitioner reported she was unsure where else to look for caregivers. (Exhibit C.)
13. On August 31, 2021, the Michigan Office of Administrative Hearings and Rules, received from Petitioner, a request for hearing. The request indicated:

The MDHHS has constructively denied and/or reduced the amount of my authorized Home Help services. I am authorized to receive 3 hours per day but I am unable to find and hire a sufficient number of Home Help workers to fully staff the 3 hours per day and, according to my MDHHS benefits specialist, the MDHHS does not contract with any provider agencies to provide staffing. (Exhibit C.)

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.

Adult Services Manual (ASM) 100 provides an overview of HHS program and provides the following:

The goals of the Home Help program are:

- To encourage and support the client's right and responsibility to make **informed choices**.
- To provide timely, quality assessments and approvals ensuring the necessary supports are offered to assist the client to live independently with dignity.
- To recognize and encourage the client's natural support system.
- To empower the client to manage their services, respecting the client's right to determine what services are necessary, when they are completed, and how they are performed.
- **To provide resources to enable client self-advocacy.**

To accomplish these goals MDHHS will:

- Administer Home Help services to client's who reside in their own home and assure client choice of provider.
- Complete a MDHHS-5534, Adult Services Comprehensive Assessment, and assure a Time and Task is developed on each open Home Help case.
- **Follow up with significant others such as family members, guardians, and friends to assess their role in the plan of care and determine what appropriate programs/resources are needed.**
- Ensure MSA-4676, Home Help Services Agreement, is completed between the client and the provider to establish the client as the employer.
- **Inform clients of available resources when needed.**

Home Help services are delivered by the **case management methodology**.¹

ASM 103 covers case management methodology and provides the following:

Case management is the primary service delivery method. All ongoing cases in which the client is receiving Medicaid or

¹ ASM 101, January 1, 2021, pp 1-2.

has an active Medicaid deductible case will be eligible for the case management services delivery method.

Case management is an ongoing process which assists adults in need of home and community-based long-term care services to access needed medical, social, vocational, rehabilitative and other services.

Core Elements

- Comprehensive assessment to identify all of the client's strengths and limitations in the areas of physical, cognitive, social and emotional functioning as well as financial and environmental needs.
- Comprehensive individualized service plan to address the identified strengths and limitations of the client using the information obtained in the assessment.
- **Mobilization and coordination of providers, family and community resources to implement the service plan by authorizing/arranging for needed services or advocating for the client to access needed government or community services.**
- Ongoing monitoring of services to maintain regular contact with the client, informal caregivers and other service providers to evaluate whether the services are appropriate, of high quality, and are meeting the client's current needs.
- Regular assessment and follow-up as a formal review of the client's status to determine whether the person's situation and functioning have changed and to review the quality and appropriateness² of services

ASM 102 addresses Person Centered Planning and Advocacy and provides the following:

The adult services worker (ASW) views each client as an individual with specific and unique circumstances, and will approach case planning holistically, from a person-centered, strength-based perspective.

² ASM 103, Services Methodology, January 1, 2017, p 1.

Person-centered, strength-based case planning focuses on the following:

- Client as the decision-maker in determining needs and case planning.
- Client strengths and successes, rather than problems.
- Client as their own best resource.
- Client empowerment.
- The adult services worker's role includes **being an advocate** for the client. **As advocate, the ASW will:**
 - Assist the client to become a self-advocate.
 - **Assist the client in securing necessary resources.**
 - **Inform the client of options and educate him/her on how to make the best possible use of available resources.**
 - **Promote services for clients in the least restrictive environment. Participate in community forums, town meetings, hearings, etc. for the purpose of information gathering and sharing.**
 - Ensure that community programming balances client choice with safety and security.
 - **Advocate for protection of the frail, disabled and elderly.**
 - Promote employment counseling and training services for developmentally disabled persons to ensure inclusion in the range of career opportunities available in the community.³

ASM 130 addresses Plans of care and provides the following:

³ ASM 102, Person Centered Planning and Advocacy, April 1, 2018, p 1.

A plan of care must be developed for all Home Help cases. The plan of care is developed throughout the assessment in the Michigan Adult Integrated Management System (MiAIMS) comprehensive assessment.

The plan of care directs movement of the individualized care and progress towards goals identified jointly by the client and adult services worker (ASW).

A plan of care is person-centered, and strength based.

Areas of concern should be identified as an issue in the comprehensive assessment to properly develop a plan of care.

Participants in the plan should involve not only the client, but also guardians, family, significant others, and the caregiver, if appropriate.

Involvement of the client's support network is based on the best practice principals of adult services and the mission of the Michigan Department of Health and Human Services, which focus on:

- Strengthening families and individuals.
- The role of family is case planning.
- Coordinating with all relevant community-based services.
- Promoting client independence and self-sufficiency...

Address the following factors in the development of the plan of care:

- The specific services to be provided, by whom, and the approved hours.
- Discuss and document an emergency backup plan in the event the primary caregiver becomes unavailable or unable to complete services.

Example...

- Client does not have a primary caregiver identified at case opening and/or case review. ASW should document the options that have been explored with the client and that a backup caregiver plan has not been established...
- Client does not have a backup caregiver plan and is unable to be left alone safely. ASW should document the options that were discussed with the client in the event the client feels they are in danger or unsafe.

Note: All back up caregiver plans must be developed with the client and/or guardian...

Plan of care development practices will include the use of the following skills:

- ...
- Provide the necessary supports to assist clients in applying for resources...⁴

ASM 135 addresses Home Help Caregivers and reveals the following:

The client has the right to choose his or her Home Help caregiver(s). The client is the employer and may terminate the caregiver's employment at any time. Home Help services are a benefit to the client and earnings for the caregiver.⁵

The Department first argued Petitioner has no right to a hearing as a "constructive denial" of HHS does not amount to an action. The Department went on to then argue Petitioner had not met her burden of proof to show the Department's actions were improper. Specifically, the Department argued that the ASM does not require the Department to find and hire workers and that it is the Petitioner who is the employer. Additionally, the Department argued their primary responsibility is to "fund" the program. Lastly, the Department argued that if the Department were to do more than provide Home Help recipients a list of all statewide Home Help Providers, it would violate the Department's requirement to provide the recipient with "freedom of choice" and violate the Department's "state wideness" requirement.

⁴ ASM, Plan of Care, September 1, 2021, pp 1-3.

⁵ ASM, Home Help Caregivers, September 1, 2021, p 1.

After reviewing the Department's arguments, it is clear the Department wishes this tribunal to look at this issue through a very narrow lens and ignore the clear and unambiguous policy that requires the ASW to act as an advocate and assist the Petitioner in acquiring resources.

As it relates to this case, 42 CFR 438.400 defines action as a denial, reduction, **suspension**, or termination of a requested or previously authorized Medicaid covered service. The Code of Federal Regulations requires that the Petitioner file their request within 90 days of the date the notice of denial, reduction, termination, or suspension of a Medicaid covered service was sent. If Petitioner's request for hearing did not arise from the denial, suspension, reduction or termination of a requested service or previously authorized Medicaid covered service, there is no action affording an opportunity for fair hearing. Furthermore, under the Michigan Administrative Code, Medicaid beneficiaries shall be granted a hearing when "**his or her claim for assistance is denied or is not acted upon with reasonable promptness**, has received notice of suspension or reduction in benefits, or exclusion from a service program, or has experienced a failure of the agency to take into account the recipients' choice of service."⁶ In this case, the Department constructively suspended Petitioner's benefits and failed to assist the Petitioner in finding and procuring a new worker. There is no dispute that the Petitioner is responsible for hiring and firing the provider of her choosing. But this does not eliminate the requirement for the Department to assist in finding and procuring a provider.

ASM 100 is clear in that a goal of the Home Help Program is to encourage and support the client's right and responsibility to make **informed choices** and to **provide resources to enable client self-advocacy**. This is done by the Department informing clients of available **resources** and **assisting** when needed. In this case, the Department knew the Petitioner was having difficulty finding a provider. And at times the Department was aware that there were no Agency Providers operating in Petitioner's locale. When the Department was made aware of these barriers, they should have assisted the Petitioner in finding other providers. Simply providing a toll-free number is not enough. Certainly, when ASM 100 requires the Department to inform the client of **available resources and assist when needed**.

Additionally, the Department utilizes a "case management methodology". It is their primary service delivery method and is used for all ongoing cases in which the client is receiving Medicaid. One of the core elements of the methodology used is that it calls for "mobilization and coordination of providers, family and community resources to implement the service plan by authorizing/arranging for needed services **or advocating for the client to access needed government or community services**. Again, the governing HHS policy requires the Department to **advocate** on the beneficiary's behalf for the client to access needed services.

ASM 102 takes us one step farther and clearly and unambiguously defines the role of the ASW in the Person-Centered Planning process as **an advocate for the client**.

⁶ Michigan Administrative Code R 792.11002.

ASM 102 specifically indicates the ASW will **assist** the client to become a self-advocate; **assist** the client in securing necessary resources; **inform** the client of options and educate him/her on how to make the best possible use of available resources; promote services for clients in the least restrictive environment; **participate in community forums, town meetings, hearings, etc., for the purpose of information gathering and sharing**; and **advocate** for protection of the frail, disabled and elderly. ASM 102 makes it clear that the ASW is to assist the client and act as an advocate. Simply providing a toll-free number again is not sufficient and doesn't meet the requirements and obligations identified in ASM 102.

Being an advocate and assisting Petitioner in finding and procuring a Home Help Provider does not infringe on the requirement that Petitioner be the employer. The Department's attempt to argue the alternative is disingenuous at best. Even if the ASW found a possible provider, it does not mean that the Petitioner has to hire him or her. Furthermore, the evidence is clear that at least one point in time around June 15, 2020, Petitioner's ASW had discussed with Petitioner a possible non-agency provider that the ASW had found.

Lastly, ASM 100, 102, and 103 apply to all ASW's statewide and to every HHS case statewide. If the policy is followed and each ASW was to act as an advocate for their client, then there would be no violation of the Department's "state wideness" requirement.

The evidence clearly shows that the Department neglected to assist the Petitioner in finding and procuring a provider. The policy is clear that the Department is to be an **advocate** for Petitioner. Part of being an advocate is to assist the client in securing necessary resources and promoting services and assisting the client in becoming a self-advocate. Being an advocate is much more than providing a list of agencies or providing a number to call. The evidence also shows that the Department did not develop a "plan of care" that properly identified Petitioner's needs or back-up plans. As a result, I find sufficient evidence that the Department constructively suspended Petitioner's HHS benefits by failing to assist the Petitioner in finding and acquiring a HHS provider and failed to act on a claim for assistance with reasonable promptness.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that Department failed to assist Petitioner in finding and acquiring a HHS provider and failing to adequately develop a plan of care.

IT IS, THEREFORE, ORDERED that:

The Department's decision is **REVERSED**.

The Department is ordered to assist the Petitioner in finding and procuring a HHS provider and further ordered to develop a plan of care that takes into account and addresses the lack of providers in Petitioner's service area.

CA/dh



Corey Arendt
Administrative Law Judge

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

Counsel for Respondent

Erin Harrington
PO Box 30758
Lansing, MI 48909

DHHS

Joleen Peck
701 S. Elmwood Suite 19
Traverse City, MI 49684

DHHS Department Rep.

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

Counsel for Respondent

Stephanie M. Service
P.O. Box 30758
Lansing, MI 48909

Agency Representative

Allison Pool
MDHHS Appeals Section
PO Box 30807
Lansing, MI 48909

Petitioner

[REDACTED]
[REDACTED] MI [REDACTED]

Counsel for Petitioner

Jay Zelenock
309 E. Front Street
Traverse City, MI 49686