



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: November 19, 2021
MOAHR Docket No.: 21-004217
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Steven Kibit

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.*, and upon the Petitioner's request for a hearing.

After due notice, a telephone hearing was held on September 22, 2021. Petitioner appeared and testified on his own behalf. Emily Piggott, Appeals Review Officer, represented the Respondent Department of Health and Human Services (DHHS or Department). Christopher Shores, Adult Services Worker (ASW), testified as a witness for the Department.

During the hearing, the Department submitted an evidence packet that was admitted into the record as Exhibit A, pages 1-53. Petitioner did not submit any exhibits.

ISSUE

Did the Department properly suspend Petitioner's 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 is a [REDACTED] year-old Medicaid beneficiary who was been approved for HHS through the Department since October 3, 2017. (Exhibit A, page 6).
2. At the onset of Petitioner's HHS, his home help provider was his girlfriend, [REDACTED]. (Exhibit A, page 10).
3. However, in October of 2018, [REDACTED] reported to the ASW that she had moved out and requested that her check be sent to a new address.

(Exhibit A, page 11).

4. Petitioner also reported to the ASW that Petitioner had reported to Children's Protective Services (CPS) that [REDACTED] had been driving around with their kids while on pills, and that he wanted a new provider. (Exhibit A, page 11; Testimony of Petitioner).
5. [REDACTED] also subsequently reported having an open CPS case. (Exhibit A, page 12).
6. She further reported that Petitioner was verbally abusive to her and that she was afraid of him. (Exhibit A, page 15).
7. Both Petitioner and [REDACTED] also reported that the other one was hooked on drugs and had mental health issues. (Exhibit A, page 15).
8. Effective October 23, 2018, Petitioner obtained a new home help provider. (Exhibit A, page 10).
9. On December 14, 2018, a judge for the State of Michigan's 52nd Circuit Court – Family Division issued an order providing in part that [REDACTED] and Petitioner can only have incidental contact with each other. (Exhibit A, pages 17-21).
10. Effective January 9, 2019, Petitioner obtained a new home help provider. (Exhibit A, page 10).
11. On February 7, 2019, Petitioner reported that his new provider was not working out and that he wanted [REDACTED] to be his provider again. (Exhibit A, page 15).
12. The ASW advised him that [REDACTED] could not be his provider due to the "explosive situation" that occurred in October of 2018. (Exhibit A, page 15).
13. Petitioner then asked for a hearing on that decision and the Department sent him written notice of its decision and Petitioner's right to appeal it. (Exhibit A, page 15).
14. However, Petitioner did not subsequently appeal the decision. (Exhibit A, page 16; Testimony of Petitioner).
15. On September 10, 2019, during the six-month review, Petitioner and the ASW spoke about Petitioner wanting his old provider back and the ASW not allowing that to happen. (Exhibit A, page 23).
16. On March 17, 2019, during the six-month review, Petitioner and the ASW again spoke about Petitioner wanting his old provider back and the ASW

not allowing that to happen due to a long history of domestic violence. (Exhibit A, page 24).

17. The ASW did provide Petitioner with a request for hearing form in case he wanted to appeal that decision. (Exhibit A, page 24).
18. Petitioner did not request a hearing at that time. (Testimony of Petitioner).
19. By September 16, 2020, Petitioner no longer had an enrolled home help provider. (Exhibit A, page 25).
20. His case remained opened, but he was not receiving any paid services. (Testimony of Petitioner; Testimony of ASW).
21. On September 13, 2021, the Michigan Office Administrative Hearings and Rules (MOAHR) received a request for hearing from Petitioner disputing the Department's decision to not allow [REDACTED] to be his home help provider. (Exhibit A, page 5).
22. On October 13, 2021, a telephone prehearing conference was held.
23. During the conference, the Department moved that the matter be dismissed on the basis that, as Petitioner's HHS remained approved, it had not taken any negative action in this case that Petitioner could appeal.
24. However, upon review, the undersigned Administrative Law Judge determined that he possessed jurisdiction in this case, and it could be scheduled for hearing, as the Department had effectively suspended Petitioner's HHS until he chooses a different provider and recipients of HHS have the right to a hearing when their services are suspended

CONCLUSIONS OF LAW

The Medical Assistance Program 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 statutes, the Social Welfare Act, 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 physician and may be provided by individuals or by private or public agencies.

With respect to providers of HHS, Adult Service Manual (ASM) 135 states in part:

The Michigan Department of Health and Human Services (MDHHS) administers the Home Help program and provides personal care services to individuals who need hands-on assistance with activities of daily living (ADLs) and assistance with instrumental activities of daily living (IADLs). The items in this section may apply to both individual caregivers and agency providers for MDHHS. For additional policies and procedures regarding Home Help agency providers, see ASM 136, Agency Providers.

CAREGIVER SELECTION

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.

* * *

CAREGIVER CRITERIA

The determination of a caregiver's criteria is the responsibility of the adult services worker (ASW). Determine the caregiver's ability to meet the following **minimum** criteria during a face-to-face interview with the client **and** the caregiver:

Age

The caregiver must be 18 years and older.

Ability

- To follow instructions and Home Help program procedures.
- To perform the services required.
- To handle emergencies.

Physical Health

The caregiver's health must be adequate to perform the needed services.

Knowledge

The caregiver must know when to seek assistance from appropriate sources in the event of an emergency.

Personal Qualities

The caregiver must be dependable and able to meet job demands.

Criminal History Screen

All Home Help individual caregivers must undergo a criminal history screen prior to providing personal care services.

Note: The MDHHS Provider Enrollment unit, **not** local office staff, conducts criminal history screens for Home Help individual caregivers. Adult services workers **must only** use Law Enforcement Information Network (LEIN) information during an APS investigation. Use of LEIN in any other adult services program is **prohibited**; see SRM 700 and SRM 701.

Training

The individual caregiver must be willing to participate in available training programs if necessary.

Note: The Home Help payment may be terminated if the individual caregiver fails to meet any of the caregiver criteria.

ASM 135, pages 1-3

Here, Petitioner has been, and continues to be approved, for HHS, but the Department will not allow his girlfriend to be his home help provider as he has requested and has effectively suspended Petitioner's HHS until he chooses a different provider.

In appealing that action, Petitioner bears the burden of proving by a preponderance of the evidence that the Department erred. Moreover, the undersigned Administrative Law Judge is limited to reviewing the Department's decision in light of the information it had at the time it made the decision.

Given the record in this case, Petitioner has failed to meet that burden and the Department's decision must therefore be affirmed.

While Petitioner has the right to choose his home help provider, the Department also has the responsibility to determine whether a caregiver meets the applicable criteria, and it does not appear that Petitioner's proposed provider meets the criteria in this case. [REDACTED] was Petitioner's provider in the past, but it ended badly, with the ASW credibly testifying about reports of drug use, mental health issues, verbal abuse, and endangerment of children. Moreover, while Petitioner testified that it was just people saying things while in a fight, he does not dispute that the ASW's testimony was correct with respect to what Petitioner reported and [REDACTED] notably did not appear at the hearing to contradict any testimony or elaborate on what happened. Additionally, while it was heavily redacted, the Department also produced court order limiting [REDACTED] to incidental contact with Petitioner and, even if that order is no longer in effect, it only further weighs in favor of the Department's decision.

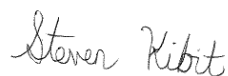
ASM 135 requires that a caregiver/provider be able to perform the services required, be dependable, and be able to meet the demands of the job; and, given the history between Petitioner and his proposed provider, Petitioner has failed to meet his burden of showing that the Department erred in finding that the proposed provider in this case did not meet the applicable criteria for the client in question and suspending Petitioner's services until he selected a qualified provider.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly suspended Petitioner's HHS.

IT IS, THEREFORE, ORDERED that:

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



SK/sb

Steven Kibit
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

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