



GRETCHEN WHITMER
GOVERNOR

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

MARLON I. BROWN, DPA
ACTING DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: January 26, 2024
MOAHR Docket No.: 23-008640
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 a request for a hearing.

After due notice, a telephone hearing was held on January 17, 2024. Petitioner [REDACTED] (Petitioner) appeared and testified on her own behalf. Emily Piggott, Appeals Review Officer, represented the Respondent Department of Health and Human Services (DHHS or Department). Alisa Scott, 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 without objection as Exhibit A, pages 1-56. Petitioner did not submit any exhibits.

ISSUE

Did the Department properly decide to terminate 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. Effective April 13, 2005, Petitioner was approved for HHS through the Department. (Exhibit A, page 8).
2. As part of the required reviews of Petitioner's HHS, her home help provider met with Petitioner's former case worker face-to-face on July 3, 2023. (Exhibit A, page 11).

3. On October 2, 2023, the ASW also sent Petitioner written notice that a home visit had been scheduled for October 23, 2023. (Exhibit A, pages 13-14).
4. On October 23, 2023, the ASW and Petitioner met in Petitioner's home. (Exhibit A, page 15; Testimony of Petitioner; Testimony of ASW).
5. However, the ASW determined that the review could not be completed at that time. (Testimony of ASW).
6. Another visit was scheduled, but that visit also was not completed. (Exhibit A, pages 15-17).
7. On November 10, 2023, the Department sent Petitioner written notice that her HHS would be terminated as of November 24, 2023. (Exhibit A, pages 18-19).
8. With respect to the reason for the termination, the notice stated:

Your service is being terminated due to policy ASM 115 where it states that ASW must see client and caregiver Face to face with their ID in the home. ASW sent out home visit letter on 10/23/2023 from 8-12. And on 11/09/2023 from 8-12 and did show both times.

Exhibit A, page 18

9. On December 4, 2023, the Michigan Office of Administrative Hearings and Rules (MOAHR) received the request for hearing filed by Petitioner in this matter with respect to the decision to terminate her HHS. (Exhibit B, pages 5-7).

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.

Here, the notice of termination specifically cited Adult Services Manual (ASM) 105 as the basis for the action. However, the Department did not rely on that policy during the hearing itself and, instead, relied upon ASM 155.

Regarding reviews of open HHS cases, ASM 155 states in part:

CASE REVIEWS

Home Help cases must be reviewed every six months.

Requirements for case review must include:

- *A face-to-face contact is required with the client in the home.*
 - *Review of client satisfaction with the delivery of planned services and care provided by the caregiver or agency.*
 - *Follow-up on any absences or hospitalization coming up or since the last home visit.*
- *A face-to-face or phone contact must be made with the caregiver or agency provider at each review to verify services are being furnished.*

Note: *If contact is made by phone, the caregiver or agency provider must offer identifying information such as date of birth and the last four digits of their social security number. A face-to-face interview in the client's home or local Michigan Department of Health and Human Services (MDHHS) office must take place at the next review.*

- A review of the current comprehensive assessment and plan of care.
- Verification of the client's Medicaid eligibility, when Home Help services are being paid.
- Follow-up collateral contacts with significant others such as family, guardians, and friends to assess their role in the plan of care, if applicable.

Documentation

Case documentation for **all** reviews must include:

- A new face to face contact should be logged as an SOP event type "six-month review" in MiAIMS contact module. The contact should include that the client was in the home and a brief statement of the requirements of the home visit, the nature of the contact and who was present during the home visit.
- Entering the "six-month review" SOP event type face to face contact with the client automatically updates the disposition details on the 360-overview tab.

Note: A face to face contact entry with the client generates a case management billing.

- A review of **all** MiAIMS modules and tabs with information updated as needed.
- Documented contact details with the Home Help caregiver or agency provider in the contact module on MiAIMS.
- Update new information obtained in the MDHHS-5534, Comprehensive Assessment, modules in MiAIMS.
- The MDHHS-5537, Plan of Care, is automatically updated when areas of concern are identified as an issue in the comprehensive assessment.
- Change in caregivers or agency providers if required.
- Add new authorization for services continuing.
- Send notification if services have been increased or decreased; see: ASM 150 Notification of Eligibility Determination

*ASM 155, pages 1-2
(italics added for emphasis)*

Here, the Department terminated Petitioner's HHS pursuant to the above policy and on the basis that the Department was unable to complete the required, face-to-face six-month review with Petitioner because of Petitioner's actions.

In appealing that decision, 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 available information and applicable policies in this case, Petitioner has met that burden of proof, and the Department's decision must therefore be reversed.

As provided above, HHS cases must be reviewed every six months, with a face-to-face contact with the home help client, and it is undisputed that no such review was completed in this case.

However, the record also reflects that Petitioner was available and willing to complete the required face-to-face review on October 23, 2023, as scheduled, and that it was the ASW who improperly determined at that time that the visit could not be completed.

During the hearing, the ASW gave varying reasons for why the review was not completed. First, in response to questioning from the Department's representative, she testified that the visit was not completed because the home help provider was not present. Later, in response to questioning from the undersigned Administrative Law Judge, she testified that the visit was not completed because it was very dark in Petitioner's home and Petitioner did not turn on any lights when requested, and because the Petitioner did not have her identification on her.

Regardless of which reason the Department now relies upon, it is insufficient.

For example, as later testified to by the ASW and provided for in policy, the ASW could have completed the required face-to-face review with Petitioner on October 23, 2023, even if the home help provider was not present, and then contacted the care provider, who had just met with the Department in person three months earlier, by telephone later.

Moreover, to the extent the ASW testified that the home was dark and the review was not completed after Petitioner did not turn lights on or up, the undersigned Administrative Law Judge does not find that testimony to be credible given that the ASW did not discuss any such issue in her case notes; the notice of termination did not identify it as basis for the termination; and the ASW did not bring it up when first questioned by the Department's representative about why the review was not completed.

Lastly, the Department points to no policy that the beneficiary must have identification on them in order for a review to be completed and the ASW expressly testified that, after the attempted home visit on October 23, 2023, she learned that the client did not have to have identification on her.

Accordingly, as the Petitioner was able and available to complete the scheduled face-to-face review on October 23, 2023, and it was the ASW who improperly determined that the review could not be done, Petitioner has met her burden of proving by a preponderance of the evidence that the Department erred in terminating her HHS on the basis that no face-to-face visit was completed due to Petitioner's actions.

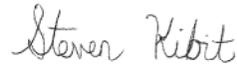
DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, decides that the Department improperly terminated Petitioner's HHS.

IT IS, THEREFORE, ORDERED that:

The Department's decision is **REVERSED**, and it must initiate a reassessment of Petitioner's HHS.

SK/sj



Steven Kibit
Administrative Law Judge

NOTICE OF APPEAL: Petitioner 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

PROOF OF SERVICE

I certify that I served a copy of the foregoing document upon all parties, to their last known addresses in the manner specified below, this 26th day of January 2024.

S. James

S. James
**Michigan Office of Administrative
Hearings and Rules**

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