GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

MARLON I. BROWN, DPA
DIRECTOR

[redacted]
[redacted] MI [redacted]

Date Mailed: December 19, 2024
MOAHR Docket No.: 24-012644
Agency No.: [redacted]
Petitioner: [redacted]

ADMINISTRATIVE LAW JUDGE: Jeffrey Kemm

DECISION AND ORDER

On November 18, 2024, Petitioner [redacted] requested a hearing to dispute Medicaid services. As a result, a hearing was scheduled to be held on December 18, 2024. Medicaid services hearings are held 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.

The parties appeared for the scheduled hearing. Petitioner's authorized hearing representative, [redacted], appeared for Petitioner. Respondent Michigan Department of Health and Human Services (Department) had Appeals Review Officer Emily Piggott appear as its representative. Adult Services Specialist MeeO'Shee Turner appeared as the Department's witness. Neither party had any additional witnesses.

Sworn testimony was taken from both parties, and one exhibit was admitted into evidence. A 77-page packet of documents provided by the Department was admitted into evidence as Exhibit A.

ISSUE

Did the Department properly close 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. [redacted] is Petitioner's mother.

2. [redacted] is disabled.

3. In November 2020, [redacted] provided the Department with a medical needs form that indicated that [redacted] was permanently disabled, [redacted]

[redacted] needed assistance with all her personal care activities, and [redacted] would never be able to work.

4. On May 28, 2024, Petitioner applied to receive HHS from the Department.

5. The Department subsequently approved Petitioner to receive HHS.

6. [redacted] signed up to be Petitioner's HHS provider, and [redacted] began working as Petitioner's HHS provider.

7. In October 2024, the OIG investigated Petitioner's case pursuant to a front-end eligibility (FEE) referral. The OIG made the following findings:

   a. [redacted] submitted a medical needs form to the Department indicating that she had several medical conditions that prevented her from being able to care for her daughter, [redacted] The form stated that Petitioner was unable to care for herself and that her condition was permanent.

   b. [redacted] subsequently signed up to be Petitioner's HHS provider, and [redacted] began working as Petitioner's HHS provider.

8. The OIG recommended that the Department close Petitioner's HHS because it appeared to the OIG that Petitioner no longer needed HHS.

9. On November 6, 2024, the Department mailed a negative action notice to Petitioner to notify her that her HHS was going to close, effective November 20, 2024. The notice stated, "case being terminated due to an OIG investigation."

10. 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.

In order to be eligible for HHS, an individual must have a need for services, based on a comprehensive assessment indicating a need for hands-on assistance with at least one activity of daily living (ADL) or a need for complex care. ASM 120 (May 1, 2023), p. 3. Those activities known as ADL's are eating, toileting, bathing, grooming, dressing,

transferring, and mobility. *Id.* at 2-3. Complex care includes care such as catheters, bowel programs, specialized skin care, suctioning, range of motion exercises, wound care, respiratory treatments, ventilators, and injections. *Id.* at 4-5.

The comprehensive assessment is the Department's primary tool for determining a client's need for services. *Id.* at 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 (May 1, 2023), 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. The comprehensive assessment must be periodically updated. It must be updated as often as necessary, but minimally at the six-month review. *Id.* at 1.

In this case, Petitioner was receiving HHS pursuant to an assessment that determined that she needed assistance. While Petitioner was receiving HHS, an adult services worker referred Petitioner's case to the OIG for an investigation due to concerns about Petitioner's provider, [redacted]

The OIG completes both intentional program violation (IPV) and FEE investigations. A FEE investigation is an investigation to gather information to assist in an eligibility determination. ASM 166 (October 1, 2020), pp. 7-8. OIG regulators complete FEE investigations and respond to staff with their findings. *Id.* The staff then use the OIG's findings to make an eligibility determination before opening or recertifying a case. *Id.*

In this case, the OIG completed a FEE investigation of Petitioner's case. The OIG found facts indicating that there were discrepancies with Petitioner's case. Based on the OIG's investigation findings, the OIG recommended that the Department close Petitioner's HHS. Petitioner had an open HHS case at the time, and the Department closed Petitioner's case pursuant to the OIG's recommendation. The Department did not complete a new assessment before it closed Petitioner's HHS case.

An HHS case may be closed when the client is no longer eligible for Medicaid, a medical professional does not certify that the client has a need for services, an assessment determines that the client no longer requires HHS, the client no longer wishes to receive HHS, or the client receives services from another program that would result in a duplication of services. ASM 170 (July 1, 2022), p. 2. None of these circumstances occurred in this case. The Department closed Petitioner's HHS case based on the OIG's recommendation without completing a new assessment. Since none of the circumstances that would permit the Department to close Petitioner's HHS case occurred, the Department did not properly close Petitioner's HHS.

The Department should not have relied exclusively on the OIG's recommendation to close Petitioner's HHS case because an OIG recommendation is not a circumstance that permits the Department to close a client's HHS case in ASM 170. Additionally, the OIG does not determine whether a client has a need for services; the Department determines whether a client has a need for services through a comprehensive

assessment. ASM 120 at 1. The Department should have used the information from the OIG's investigation together with information obtained through an updated comprehensive assessment to determine whether Petitioner still had a need for services. The Department did not obtain information through an updated comprehensive assessment before it closed Petitioner's HHS case, so the Department did not close Petitioner's HHS in accordance with ASM 170. Therefore, the Department's decision is reversed.

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 close Petitioner's HHS.

IT IS ORDERED THAT the Department's decision is **REVERSED**. The Department shall reinstate Petitioner's HHS, and the Department shall update Petitioner's comprehensive assessment in accordance with ASM 120. The Department shall begin to implement this decision within 10 days of the date of mailing of this decision and order.

JK/pe

Jeffrey Kemm
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

Via Electronic Mail:

Agency Representative
Emily Piggott
DCH Appeals Section
222 N. Washington Sq., Ste. 100
Lansing, MI 48909
PiggottE2@michigan.gov

DHHS Department Contact
Michelle Martin
MDHHS
400 S. Pine St., 6th Floor
Lansing, MI 48933
MDHHS-Home-Help-Policy@michigan.gov

DHHS Location Contact
Heather McBride
Genesee County DHHS
125 E. Union St., 7th Floor
Flint, MI 48502
McBrideH@michigan.gov

DHHS Department Representative
Mary Carrier
MDHHS Appeals Section
P.O. Box 30807
Lansing, MI 48909
MDHHS-Appeals@michigan.gov

Via First Class and Electronic Email:

Petitioner and Authorized Hearing Representative
[redacted]
[redacted] MI [redacted]
[redacted]