STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH
P.O. Box 30763, Lansing, MI 48909
(517) 335-2484; Fax: (517) 373-4147

IN THE MATTER OF:

Docket No. 15-000062 HHS[1]

[redacted]

Appellant.
_____/

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 Appellant's request for a hearing.

After due notice, a hearing was held on [redacted]. Appellant appeared and testified on her own behalf. [redacted] Appeals Review Officer, represented the Department of Community Health (DCH or Department). [redacted] Adult Services Specialist, and [redacted] Adult Services Supervisor, from the [redacted]ounty Department of Human Services (DHS) testified as witnesses for the Department.

ISSUE

Did the Department properly deny Appellant's request for Home Help Services (HHS) prior to [redacted]

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. Appellant is a [redacted] year-old Medicaid beneficiary who has been diagnosed by a physician with hip pain, back pain, and joint pain. Appellant also reports being diagnosed with arthritis, carpal tunnel syndrome, high blood pressure, asthma, and diabetes mellitus. (Exhibit A, pages 7, 9).

2. On [redacted] Appellant was referred for HHS. (Exhibit A, page 8).

3. On [redacted] completed an initial intake with Appellant and Appellant's proposed home help provider. (Exhibit A, pages 19-20).

[1] This matter was originally coded by the Michigan Administrative Hearing System (MAHS) as an HHP case type after it received the Request for Hearing. However, during the hearing, it became clear that Appellant is a Home Help Services Beneficiary, and not a Home Help Services Provider. Accordingly, the undersigned Administrative Law Judge indicated that the matter should have been coded as a HHS case type and that it would be re-coded as such after the hearing.

4. While Appellant was a new applicant, her proposed home help provider was previously enrolled in Bridges and had an home help provider identification number. (Testimony of [redacted]

5. During that intake, [redacted] indicated that Appellant appeared to qualify for HHS and that payments should begin for [redacted] (Testimony of Appellant; Testimony of [redacted]).

6. In her notes generated following that intake, however, [redacted] indicated that Appellant appeared to qualify for services, but that the required medical needs form had not yet been received and that no decision would be made until that form was received. (Exhibit A, page 20).

7. In reviewing policy, [redacted] also discovered that, despite what she had told Appellant, no payments could be made to Appellant's provider until the provider underwent and passed a criminal history screening. (Testimony of [redacted]).

8. Appellant's provider passed the criminal history screening on [redacted]. (Exhibit A, page 19).

9. On [redacted] [redacted] sent Appellant a written Services and Payment Approval Notice providing that Appellant had been approved for [redacted] of HHS per month, with an effective start date of [redacted]. (Exhibit A, pages 5-6).

10. On [redacted] the Michigan Administrative Hearing System (MAHS) received the request for hearing filed by Appellant in this matter regarding the denial of payments for services allegedly provided by her home help provider prior to [redacted] (Exhibit A, page 4).

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 statute, 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.

Regarding the requirements for HHS, Adult Services Manual 115 (5-1-2013) states:

> **APPLICATION FOR SERVICES (DHS-390)**
>
> The client must complete and sign a DHS 390, Adult Services Application to receive independent living services. An authorized representative or other person acting for the client may sign the DHS-390 if the client either:
>
> - Is incapacitated.
> - Has a court-appointed guardian.
>
> A client unable to write may sign with an X, witnessed by one other person (for example, relative or department staff). The adult services specialist **must not** sign the DHS-390 on behalf of the client.
>
> The DHS-390 remains valid unless the case record is closed for more than 90 days.
>
> **MEDICAL NEEDS FORM (DHS-54A)**
>
> The DHS-54A, Medical Needs form must be signed and dated by a medical professional certifying a medical need for personal care services. The medical professional must be an enrolled Medicaid provider and hold one of the following professional licenses:
>
> - Physician (M.D. or D.O.).
> - Nurse practitioner.
> - Occupational therapist
> - Physical therapist.
>
> **Note:** A physician assistant (PA) is not an enrolled Medicaid provider and **cannot** sign the DHS-54A.
>
> The medical needs form is only required at the initial opening for SSI recipients and disabled adult children (DAC). All other Medicaid recipients must have a DHS-54A completed at the initial opening and annually thereafter.
>
> The client is responsible for obtaining the medical certification of need but the form must be completed by the medical professional and not the client. The National Provider Identifier (NPI) number must be entered on the form by the medical provider and the medical professional must indicate whether they are a Medicaid enrolled provider.

The medical professional certifies that the client's need for service is related to an existing medical condition. **The medical professional does not prescribe or authorize personal care services.** Needed services are determined by the comprehensive assessment conducted by the adult services specialist.

If the medical needs form has not been returned, the adult services specialist should follow-up with the client and/or medical professional.

Do **not** authorize home help services prior to the date of the medical professional signature on the DHS-54A.

The medical needs form does not serve as the application for services. If the signature date on the DHS-54 is before the date on the DHS-390, payment for home help services must begin on the date of the application.

Example: The local office adult services unit receives a DHS-54A signed on 1/18/2011 but a referral for home help was never made. The adult services staff enters a referral on ASCAP and mails an application to the client. The application is returned to the office with a signature date of 2/16/2011. Payment cannot begin until 2/16/2011, or later, if the provider was not working during this time period.

If the case is closed and reopened within 90 days with no changes in the client's condition, a new DHS-54A is not necessary.

Veteran's Administration (VA)

The Michigan Department of Community Health (MDCH) will accept a DHS-54A completed by a Veteran's Administration physician or the VA medical form in lieu of the medical needs form.

COMPREHENSIVE ASSESSMENT (DHS-324)

Conduct a face-to-face interview with the client in their home to assess the personal care needs. Complete the DHS-324, Adult Services Comprehensive Assessment which is generated from the Adult Services Comprehensive Assessment Program (ASCAP); see ASM 120, Adult Services Comprehensive Assessment.

SERVICE PLAN

Develop a service plan with the client and/or the client's representative. Determine the method of service delivery and any use of home help services with other types of services to meet the assessed needs of the client. The ILS service plan is developed whenever an issue is identified in the comprehensive assessment; see ASM 130, Service Plan.

CONTACTS

The specialist must, at a minimum, have a face-to-face interview with the client, prior to case opening, then every six months in the client's home, at review and redetermination.

An initial face-to-face interview must be completed with the home help provider in the client's home or local DHS office. A face-to-face or phone contact must be made with the provider at the next review or redetermination to verify services are being furnished.

Note: If contact is made by phone, the 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 DHS office must take place at the next review or redetermination.

NOTIFICATION OF ELIGIBILITY DETERMINATION

If independent living services are approved, complete and send a DHS-1210, Services Approval Notice indicating what services will be provided. If home help services will be authorized, note the amount and the payment effective date. If home help services are denied, send a DHS-1212A, Adequate Negative Action Notice stating the reason for the denial; see ASM 150, Notification of Eligibility Determination.

ASM 115, pages 1-3

With respect to home help providers, Adult Services Manual 135 (12-1-2013) also provides in part:

INTRODUCTION

The items in this section apply to both individual and agency providers.

> **PROVIDER SELECTION**
>
> The client has the right to choose the home help provider(s). As the employer of the provider, the client has the right to hire and fire providers to meet individual personal care service needs. Home help services is a benefit to the client and earnings for the provider.
>
> The determination of provider criteria is the responsibility of the adult services specialist.
>
> * * *
>
> **PROVIDER INTERVIEW**
>
> An initial face-to-face interview must be completed with the home help provider. A face-to-face or phone contact must be made with the provider at the six month review or redetermination to verify services are being furnished.
>
> * * *
>
> **PROVIDER ENROLLMENT**
>
> All home help providers **must** be enrolled in Bridges by a designee at the local county DHS office prior to authorizing payment. Once a provider is enrolled, Bridges will assign the provider a seven digit identification number. The adult services specialist must allow 24 hours from the time of enrollment for Bridges to interface with ASCAP.
>
> Instructions for enrolling a provider on Bridges are found on the **Office of Training and Staff Development home page**. Instructions on assigning a provider in ASCAP are in the **ASCAP User Guide** located on the adult services home page.
>
> *ASM 135, pages 1-2, 4*

Moreover, as noted by the Department's witness, the provisions of the Adult Services Manuals addressing home help providers has been supplemented by Medicaid Bulletins issued by the Medical Services Administration. For example MSA Bulletin 14-31, issued July 31, 2014 and effective September 1, 2014, provides in part:

> This bulletin provides additional information about the Michigan Department of Community Health's (MDCH) implementation of Medicaid provider screening and

enrollment requirements of Sections 6201, 6401, and 6501 of the Affordable Care Act (ACA) and state policy as reflected in the General Information for Providers Chapter, Section 2 – Provider Enrollment, in the Michigan Medicaid Provider Manual. Section 1128(a) of 42 U.S.C.1320a-7 (the Social Security Act) prohibits individuals or entities from participating in programs funded under the Act if they have been convicted of any of the Mandatory Exclusion offenses outlined below. The Act permits the State to apply additional permissive restrictions; however those will be covered in a subsequent bulletin. This policy applies to all providers of personal care services that are delivered through the Michigan Medicaid Home Help program and the MI Choice waiver program.

For the purposes of this policy, a provider is any individual providing a direct or indirect program service to a beneficiary or enrollee of the Home Help or MI Choice programs that is reimbursed by Medicaid. This applies to both independent providers of service as well as employees of service agencies. The criminal history screen will be conducted either by MDCH through the provider registration process or as assigned by contract with the MI Choice waiver agencies. Screenings under this policy will not require fingerprinting of the individual being screened and will be conducted though available public record databases.

* * *

Criminal History Screening: All current and potential providers covered under this policy must agree to a criminal history screening. Such approval will be indicated through the submission of a signed MSA-4678 Medical Assistance Home Help Provider Agreement, a properly submitted online program provider application, or other authorized application approved by the department. Valid identifying information, including name, home address, date of birth, and Social Security Number, must be provided by all providers and applicants. The screening must be completed and passed before a provider will be allowed to provide services under a Medicaid program. Subsequent screening will be administered as described below. Approved and existing individual providers will be periodically reviewed and rescreened by MDCH.

Exhibit A, pages 21-22

Similarly, MSA Bulletin 14-40, issued September 2, 2014 and effective October 2, 2014, provides in part:

> The Michigan Department of Community Health (MDCH) intends to utilize the authority extended to the state through 42 USC 1396t(k)(4) to meet the requirements under 42 CFR 441.570 to assure that "[n]ecessary safeguards have been taken to protect the health and welfare of enrollees." This bulletin extends the Medicaid provider criminal history screening and enrollment requirements to individuals who offer personal care services through the Medicaid Home Help program. Additionally, it augments the list of excludable convictions as outlined in Bulletin MSA 14-31 to include permissive exclusions as defined below. The screening requirements described in this bulletin are to apply to all providers of Medicaid Home Help personal care services. The requirements apply to both individual providers and to those providing services as an employee of a provider agency.
>
> As used in this bulletin, "personal care services" include services provided to a Medicaid beneficiary to assist the beneficiary with completing their Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADLs) while the beneficiary is in a home or community-based setting. ADLs include eating, bathing, dressing, toileting, transferring, mobility, walking, and personal hygiene. IADLs include financial management, shopping, telephone use, transportation, housekeeping, meal preparation, and managing medications.
>
> **Compliance Timeline:** Beginning October 2, 2014, all new provider applicants must fully meet the provisions of this bulletin before being enrolled to provide services. Providers must be properly enrolled prior to being authorized, approved, or reimbursed to provide personal care services through the Medicaid Home Help program.
>
> All currently enrolled providers must be fully compliant with the provisions of this policy by March 31, 2015. Screenings, updates, enrollments, and notifications to currently enrolled providers will be done on a timeline to be established by MDCH, but will be completed no later than the March 31, 2015 deadline.

* * *

> The criminal history screening will be conducted by MDCH through a reputable and reliable data source. Screenings for any provider may be updated on a schedule set by the MDCH or as deemed necessary for the protection of a Medicaid beneficiary.
>
> **Provider Application or Agreement:** Any individual wishing to provide personal care services through the Medicaid Home Help program, including those providing such services as an employee of a provider agency, must submit a properly formatted and approved application or service agreement form to MDCH that:
>
> - Provides notification that a criminal history screening will be performed on the applicant or provider;
> - Identifies the general categories of convictions that will be screened;
> - Provides adequate information as determined by MDCH to conduct such a screening;
> - Notifies the applicant or provider that the results of the screening will be shared with the applicant, pertinent program participants, and pertinent program staff; and
> - Is signed by the applicant or provider.
>
> *Exhibit A, pages 24-25*

Here, Appellant's need for HHS is not disputed and she has been authorized such services. Instead, Appellant disputes the start date of payments, claiming that payments should have started in [redacted] rather than on [redacted]

In filing her request for hearing, Appellant bears the burden of proving by a preponderance of the evidence that the Department erred.

With respect to its decision, the Department's witnesses testified that payments were authorized as of the date all the requirements outlined in the above policies and bulletins were met, including the medical needs form being submitted and the proposed home help provider passing a criminal history screening.

In response, Appellant testified that [redacted] told Appellant during the initial intake that payments should start in [redacted] also confirmed that, based on her understanding of policy at the time, she did tell Appellant that payments should start in [redacted] Appellant further testified that, based on [redacted]' statement, her home help provider began providing services.

However, even though it is true that the worker mistakenly told Appellant that payments should start in [redacted] the Department is still bound by the applicable policy and it cannot authorize payments prior to all requirements being met. Moreover, given the

evidence in this case, Appellant has failed to demonstrate that all such requirements were met prior to [redacted] or that the Department erred. Appellant could not identify the specific date she believed services should have started; the general narrative indicated that the medical needs form had not been submitted at the time of intake and it is not clear when it was submitted; and Appellant's proposed home help provider did not pass the criminal history screening until [redacted] Accordingly, the undersigned Administrative Law Judge finds that the Department's decision must be affirmed.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that, the Department properly denied Appellant's request for HHS payments prior to [redacted].

IT IS THEREFORE ORDERED THAT:

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

Steven J. Kibit
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Community Health

Date Signed: [redacted]

Date Mailed: [redacted]

SK/db

cc: [redacted]

***** NOTICE *****

The Michigan Administrative Hearing System may order a rehearing on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. The Michigan Administrative Hearing System will not order a rehearing on the Department's motion where the final decision or rehearing cannot be implemented within 90 days of the filing of the original request. The Appellant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt of the rehearing decision.