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. 15-000158 HHP

[REDACTED],

Petitioner,
_______________________/

Issued and entered
this 24th day of March, 2015
by Janice G. Spodarek, Administrative Law Judge
Michigan Administrative Hearing System
for the Department of Community Health

PROPOSAL FOR DECISION

This matter is before the Michigan Administrative Hearing System pursuant to Michigan Compiled Laws §400.1 *et seq.*, the Michigan Administrative Code MCL 400.3401-400.3425, and the MCL 24.271 *et seq.*

After due notice, a hearing was held on [REDACTED]. Petitioner appeared and testified on her own behalf.

[REDACTED], Appeals Review Officer, appeared and testified on behalf of the Department of Community Health.

ISSUE

Did the Department act properly in denying Petitioner's request for payment for Home Help Services (HHS) services as a provider for the month of [REDACTED] on the grounds that the client for whom Petitioner was providing services had an open MI Choice Waiver case?

FINDINGS OF FACT

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

1. The Department is required to have all caregivers employed through the Department's HHS program to be registered as Medicaid enrolled providers. During the disputed time herein, Petitioner was a provider of HHS (an "HHP") for the beneficiary [REDACTED].

2. On , Administrative Law Judge (ALJ) Corey A. Arendt commenced an administrative hearing filed by to appeal the non-payment of her HHS grant "effective ." (Docket No. 2014-22002 HHS; Case No.). (Exhibit A.5) ALJ Arendt issued a Dismissal Order stating that "…all parties agreed the Department would re-determine the Appellant's eligibility for HHS effective and issue retroactive benefits if otherwise eligible and qualified dependent on the date the Appellant was enrolled in the Waiver Program." . (Exhibit A.5).

3. On was enrolled in the Medicaid Waiver Program. The Bridges MA History data match indicates that had an LOC of code 22 beginning . (Exhibit A.6).

4. Petitioner provided HHS for the recipient for the month of . (Testimony). Petitioner was not paid. (Testimony).

5. On , the Michigan Administrative Hearing System received Petitioner's request for Hearing stating "…we had a hearing on it was agreed that I receive my pay for . A year has passed and I still have not gotten the pay for that month as agreed. Please help me in this matter. Thank you." (Exhibit A.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.

All Medicaid providers are required to enter into Medicaid Provider agreements.

> A provider shall enter into an agreement of enrollment specified by the director. [MCL 400. 111b(4)].

The Social Welfare Act, MCL 400.1 *et seq.*, provides that as a condition of participation in the Medicaid program a provider must meet all the requirements listed in MCL 400.111b.

> As a condition of participation, a provider shall meet all of the requirements specified in this section except as provided in subsections (25), (26), and (27). [MCL 400.111b(1)].

The Department Director has authority to establish policies related to enrolled Medicaid Providers, including that the provision of services and reimbursement of those services be for medically necessary services. MCL 400.111a.

The mere fact that a provider submits a claim or cost report for services rendered does not establish entitlement. MCL 400.111b(10) provides:

> …Submission of a claim or claims rendered under the [Medicaid] program does not establish in the provider a right to receive payment from the program.

If the Department disputes the amount of payments the provider is entitled to an administrative hearing pursuant to MCL 400.111c. The burden to prove entitlement to Medicaid reimbursement is on the Petitioner. *Prechel v. MDSS*, 186 Mich App 547, 549; 465 NW2d 337 (1990).

Here, unrefuted evidence is that Petitioner provided HHS caregiver services during the month of [redacted], and, was not paid. The beneficiary for whom Petitioner provided services appealed the failure of the Department to make payment, for which an administrative hearing was commenced on [redacted]. As noted in the Findings of Fact, at that time, ALJ Arendt issued a Dismissal Order on the grounds that the parties agreed to that the Department would re-determine eligibility and issue any retroactive benefits "if otherwise eligible on the date the Appellant was enrolled in the Waiver Program." (Exhibit A.5).

On [redacted], Petitioner requested the present administrative hearing as an enrolled provider on the grounds that she still has not been paid, and, has not been informed of the outcome.

The Department contends that despite having rendered services, Petitioner is not entitled to any payment on the grounds that the beneficiary was enrolled in the MI Choice Waiver Program during the month of [redacted]. (See Exhibit A.6). The Department further contends that it is irrelevant as to type or amount of services rendered by a MI Choice case; a beneficiary may not have any services from the HHS program if a MI Choice Waiver case is open, regardless of whether the beneficiary receives 1 hour or 100 hours with the MI Choice. In other words, duplication of benefits is irrelevant; what triggers ineligibility is whether or not an individual has an open case, regardless of the level of services. (Testimony).

In support of its argument the Department cited ASM 125 Coordination with Other serves policy where it states in part:

> **Level of Care 22 MI Waiver**
>
> Client with a level of care 22 are receiving services from the MI Choice waiver. Participants of the MI Waiver **cannot** receive services from both the waiver and home help services. ASM 125, page 11 of 12; Effective 5/1/2013.

Applicable policy found in the Medicaid Provider Manual under the MI Choice Waiver Chapter states in part:

> **2.2.B. FREEDOM OF CHOICE**
>
> Applicants or their legal representatives must be given information regarding all long-term care service options for which they qualify through the nursing facility LOCD, including MI Choice, Nursing Facility and the Program of All-Inclusive Care for the Elderly (PACE). That a participant might qualify for multiple programs does not mean they can be served by all or a combination thereof for which they qualify. Nursing facility, PACE, MI Choice, and Adult Home Help services cannot be chosen in combination with other. Applicants must indicate their choice, subject to the provisions of the Need for MI Choice Services subsection of this chapter, and document via their signature and date that they have been informed of their options via the Freedom of Choice (FOC) form that is provided to an applicant at the conclusion of any LOCD process. Applicants must also be informed of other service options that do not require Nursing Facility Level of Care, including Home Health and Home Help State Plan services, as well as other local public and private service entities. The FOC form must be signed and dated by the applicant (or their legal representative) seeking services and is to be maintained in the applicant's case record. Medicaid Provider Manual, MI Choice Waiver Chapter, page 2-3, Effective July 1, 2013.

Again, the Department testimony is that unrefuted evidence is that Petitioner had a MI Choice Waiver case open in [redacted]. Under ASM 125, and the Medicaid Provider Manual MI Choice Waiver Chapter cited above, a Medicaid beneficiary cannot receive services from both the MI Choice Waiver program and HHS. The Department testimony here is that there need not be any evidence of an actual duplication; only whether a recipient has a MI Choice waiver case open. As the evidence here shows that the beneficiary had a MI Choice Waiver case opened in [redacted], the Department cannot pay Petitioner for services rendered under the HHS program for the month of [redacted].

As to the Department's failure to notify Petitioner as to the outcome of ALJ Arendt's order, the Department is correct that as Petitioner was not a party to the action, she had no right to notice.

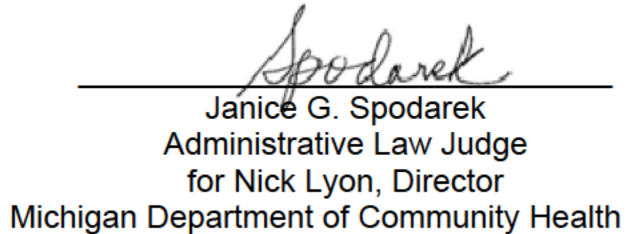
It is noted that this decision makes no finding regarding any potential third party liability. As the facts stand, and under general evidentiary administrative rules, the Department's action is supported by substantial and credible evidence and thus, must be upheld.

IT IS THEREFORE PROPOSED THAT:

The Administrative Law Judge, based on the above findings of fact and conclusions of law, RECOMMENDS that the Department's actions be **AFFIRMED**.

EXCEPTIONS

Any party may, within ten (10) days from the date of mailing this decision, file exceptions with the Michigan Administrative Hearing System for the Department of Community Health, P.O. Box 30695, 611 W. Ottawa, 2nd Floor, Lansing, Michigan 48909. Exceptions shall be served on all parties.



Janice G. Spodarek
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Community Health

cc:

Date Signed:

Date Mailed: