

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES
P.O. Box 30763, Lansing, MI 48909
Phone: (517) 335-3997; Fax: (517) 373-4147

IN THE MATTER OF:

██████████
Appellant
_____ /

CASE INFORMATION

Docket No.: 15-000067-HHS

Case No.: ██████████

Appellant:
██████████

Respondent:
Department of Community Health

HEARING INFORMATION

Hearing Date: March 18, 2015

Start Time: 01:00 PM

Location

In Person at Agency Office
Oakman Adult Services
3040 W. Grand Blvd., Suite L450
Detroit, MI 48202

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 March 18, 2015. Appellant appeared and testified on her own behalf. Leethia Bridges also appeared as a witness. ██████████ Appeals Review Officer, represented the Department of Community Health (DCH or Department). ██████████ IOA Caseworker, and ██████████ Adult Services Supervisor, from the Wayne County 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 December 16, 2014?

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 ██████████ Medicaid beneficiary who has been diagnosed by a physician with coronary artery disease, hearing loss, headaches, hypertension, vertigo and bronchitis. (Exhibit A, page 11).
2. On October 8, 2014, Appellant was referred for HHS. (Exhibit A, page 10.)

3. On November 6, 2014, Claimant's then Adult Services Specialist ██████████ completed an initial intake with Appellant and Appellant's proposed home help provider. (Exhibit A, pages 12 and 13.)
4. While Appellant was an ongoing recipient, her proposed home help provider was new and was not previously enrolled in Bridges and did not have a home help provider identification number. At the end of the home visit notes indicate that the Specialist enrolled ██████████ as the provider (Exhibit 1 page 13).
5. During that intake, the Specialist ██████████ indicated that Appellant appeared to qualify for HHS.
6. On December 2, 2014 the Department sent the Claimant an Advance Negative Action Notice which advised the Appellant that the application was approved effective October 6, 2014 and further stated that Home Health Services were approved in the amount \$353.93. In the Comment Section of the Notice the Specialist advised that "once I have registered ██████████ as your provider I will send you provider logs and authorize payments." (Exhibit 1 page 7.)
7. Thereafter the Department authorized payment services effective December 16, 2014. (Exhibit A, page 16.)
8. In reviewing policy, ██████████ 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 ██████████.)
9. Appellant's provider passed the criminal history screening on October 2, 2014. (Exhibit A, page 19.)
10. On October 22, 2014, ██████████ sent Appellant a written Services and Payment Approval Notice providing that Appellant had been approved for \$210.86 of HHS per month, with an effective start date of October 2, 2014. (Exhibit A, pages 5-6.)
11. On January 6, 2014, 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 December 16, 2014. (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.

In this case the Appellant asserts that her provider should be paid as of October 6, 2014, the date that the Department sent the Claimant a DHS 1210 advising her that her application was approved effective October 6, 2014. (Exhibit A page 6.)

Department policy in ASM 150 provides:

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, the provisions of the Adult Services Manuals addressing home help providers have 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 through 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. (Emphasis supplied).

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. (Emphasis supplied).

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.

Here, Appellant's need for HHS is not disputed and she has been authorized such services. Instead, Appellant disputes the start date of HHS payments. Appellant asserts that the HHS payments should have started on October 6, 2014 rather than on December 16, 2014 when her provider was issued a provider ID number and registered in Bridges. The Department credibly testified that based upon its records the provider payments were authorized December 16, 2014 when the provider for Appellant was registered in Bridges. Preceding this registration the Department had to send this application to the Department of Community Health for a criminal background check. Once this was returned approved, the provider was registered in Bridges as approved. (Testimony of ██████████.)

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, and the proposed home help provider passing a criminal history screening. Although several missteps occurred including losing the copies of the provider ID and social security number, and the assigned caseworker leaving, nonetheless Department policy does not authorize payments to begin until all the steps outlined above are satisfied.

In response, Appellant testified that the Advance Negative Action Notice dated December 2, 2014 led her to believe that payments should start in October of 2014. Although the Notice sent to the Claimant advising her that her application was approved October 6, 2014, the Comments section clearly states: "Once I have registered ██████████ as your provider I will send you provider logs and authorize payments." The Appellant was never sent provider logs and a clear reading of the Notice and Comments makes it clear that Appellant was not told that payments were authorized. The Comments section clearly conditions payment on registering the provider and authorizing payments, neither act had been accomplished by December 2, 2014.

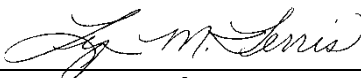
However, even though it is true that the Appellant mistakenly believed that payments were authorized by the December 2, 2014 Notice and that payments should start on October 6, 2014, the Department is still bound by the applicable policy and it cannot authorize payments prior to all requirements being met. Moreover, given the evidence in this case, Appellant has failed to demonstrate that all such requirements were met prior to December 16, 2014 or that the Department erred in applying the applicable policy requirements. 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 December 16, 2014.

IT IS THEREFORE ORDERED THAT:

The Department's decision is **AFFIRMED**



Lynn M. Ferris

Administrative Law Judge

for Nick Lyon, Director

Michigan Department of Community Health

Date Signed: April 23, 2015

Date Mailed: April 23, 2015

LMF/cl

CC:

[REDACTED]
[REDACTED]
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■ 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.