



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

MIKE ZIMMER
DIRECTOR

[REDACTED]

Date Mailed: April 12, 2016
MAHS Docket No.: 15-018563
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Landis Lain

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.*, upon the Petitioner's request for a hearing.

After due notice, a hearing was held on [REDACTED]. Petitioner and her provider [REDACTED] appeared and testified on behalf of the Petitioner. [REDACTED], Appeals Review Officer and [REDACTED], Adult Services Worker represented the Department of Health and Human Services (Department).

State's Exhibit A pages 1-47 were admitted as evidence.

ISSUE

Did the Department properly determine that Petitioner's start Date for Home Help Services (HHS) was [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. Petitioner is a Medicaid benefit recipient.
2. Petitioner was released from the nursing home [REDACTED].
3. Petitioner is diagnosed with right hip osteoarthritis.
4. On [REDACTED], Petitioner applied for HHS.

5. On [REDACTED], the Adult Services Worker sent Petitioner a DHS-1210 – a Services and Payment Approval notice informing her that home help services were approved effective [REDACTED] in the amount of \$ [REDACTED] per month.
6. A criminal background check showed that Petitioner's provider has an excludable criminal conviction.
7. On [REDACTED], the Petitioner signed a personal choice selection and provider payments started on [REDACTED], as a result.
8. On [REDACTED], the Michigan Administrative Hearing System (MAHS) received Petitioner's request for hearing, protesting the start date for HHS.

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.

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.

Rule 400.3406 provides, in pertinent part:

Rule 6. (1) A provider or applicant is entitled to a hearing pursuant to chapter 4 of Act No. 306 of the Public Acts of 1969, being S24.271 et seq. of the Michigan Compiled Laws, in any case in which there has been a final determination of an adverse action as defined in R 400.3401, except where that action is predicated upon the situation described in subrule (2). Emphasis added.

Rule 400.3401 provides, in pertinent part:

- (a) "Adverse action" includes, but is not limited to:
- (i) A suspension or termination of provider participation in the medical assistance program.
 - (ii) A denial of an applicant's request for participation in the medical assistance program.

(iii) A denial, revocation, or suspension of a certification issued by the department to allow a facility to operate.

(iv) The reduction, suspension, or adjustment of provider payments. (Emphasis added)

(v) Retroactive adjustments following the audit review and determination of the daily reimbursement rates for institutional providers.

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

(4) A provider shall enter into an agreement of enrollment specified by the director.

(M.C.L. § 400.111b(4))

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

(1) 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).

(M.C.L. § 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. M.C.L. § 400.111a.

The mere fact that a provider submits a claim or cost report for services rendered does not establish entitlement. M.C.L. § 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 M.C.L. § 400.111c. The burden to prove entitlement to Medicaid reimbursement is on the Petitioner. *Prechel v. MDSS*, 186 Mich. App. 547, 549; 465 N.W.2d 337 (1990).

The Michigan Department of Community Health (MDCH)(Now Michigan Department of Health and Human Services) utilizes the authority extended to the State of Michigan 42 USC 1396t (k)(4) to meet the requirements under 42 CFR 441.570 to assure that “necessary safeguards have been taken to protect the health and welfare of enrollees.” Bulletin number MSA 14-40 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 includes a list of excludable convictions as outlined in bulletin MSA 14-31 to include permissive exclusions. The screening requirements are to apply to all providers of Medicaid personal care services. The requirements apply to both individual providers and to those providing services as an employee of the provider agency.

MSA Bulletin 14-40 states in pertinent part:

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 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.

Beginning October 2, 2014, all new provider applicants must fully meet the provisions of Home Help Provider Bulletin MSA 14-40: Excludable Convictions for Medicaid Help Program Personal Home Service Providers before Being Enrolled to Provide Services. Providers Must Be Properly Enrolled Prior to being authorized, approved or reimbursed to provide personal care services for the Medicaid Home Help program. In Addition, all currently enrolled providers must be fully compliant with the provisions of the policy by March 31, 2015.

Excludable convictions fall into two categories. Mandatory exclusion as discussed in bulletin MSA 14 – 31 are those set forth in the Social Security act 42 USC 1320a-7[a]. Permissive exclusions are allowed under part(b) of that section.

Mandatory exclusions are:

Convictions associated with program related fraud and patient of use, healthcare fraud, and felony controlled substance crimes. These exclusions are mandated and defined under 42 USC 1320a-7 and articulated in Bulletin MSA 14 – 31.

Convictions of crimes directly relatable to neglect, physical and sexual abuse, financial exploitation, inappropriate in voluntary restraint, providing qualified healthcare services and other crimes identified by MDCH. The list of specific crimes shall be the same as those defined for nursing facilities, County medical care facilities, hospices, and other long-term service and support providers as set out in defined in the Public Health: Act 368 of 1978, specifically Public Act 28 section 20173a(1). This list includes, but is not limited to crimes that:

- involve the intent to cause death or serious impairment of bodily function;

- result in death or serious impairment of bodily function;
- involve the use of force or violence;
- involve cruelty or torture;
- involve criminal sexual conduct;
- involve abuse and neglect;
- involve the use of a firearm or a dangerous weapon;
- involve larceny, theft, or embezzlement;
- involve a felony driving under the influence (DUI);
- involving assaults, sensory, or the threat thereof;
- involve a crime against a “vulnerable adult”;
- involve retail fraud; or
- states that the conviction of a felony reduced to a misdemeanor.

For purposes of the last mentioned above, an individual or entity is considered to have been convicted of a criminal offense when:

- a judgment of conviction has been entered against the individual or entity by a federal, state, local court, regardless whether an appeal is pending or whether the judgment of conviction or other record relating to conduct have been expunged;
- a finding of guilt by judge or jury against the individual or entity by a federal, state or local court; or
- a plea of guilty or nolo contendere by the individual or entity has been accepted by federal, state, local court.

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 as deemed necessary for the protection of a Medicaid beneficiary.

Provider Application or Agreement calling any individual wishing to provide personal care services through the Medicaid Home Help program, including those providing such services as an employee of the provider agency, must submit a properly formatted approved application or service agreement to MDCH that:

- Provides notification of a criminal history screening will be performed on the applicant provider;
- provides the general categories of convictions that will be screened;
- provides adequate information and 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, pertinent program staff; and
- is signed by the applicant or provider.

Providers are reminded that they must notify MDCH (MDHHS) within 10 days of any change to the enrollment information. Failure to do so will result in termination of provider enrollment.

Specifications: MDHHS will notify applicants or providers within 10 business days of an ineligible criminal history screening. The Department will concurrently notified all affected program participants and the Department of Human Services staff of all criminal history information discovered through the screening process. The notice shall include a statement that the applicant or provider has a right to appeal the information relied upon by MDCH (MDHHS) in making its decision regarding his or her employment eligibility based on the criminal history screening. The notice shall also include information describing the appellate procedures.

A participant receiving personal care services through the Medicaid Home Health program may select any family member or other individual to provide such services subject to the following restrictions:

- The provider does not have a disqualifying conviction that is one of the four mandatory exclusions under 42 USC 1320a-7.
- The provider is not legally responsible for the participant.
- The provider is capable of providing the required services and is otherwise qualified to do so.
- The provider has successfully undergone a criminal history screening conducted by the MDC age and has received notification of a successful determination.

A participant may request to select a provider who has been determined ineligible as a result of a permissive exclusion identified through the criminal history screening process. The request must be submitted on a form specified by MDC age. The participants must provide a signed acknowledgment that indicates receipt of notification of the criminal offense which prompted the exclusion must indicate the selection of the provider to deliver services. The selection shall not be considered effective until the signed acknowledgment has been received, process, recorded by MDCH can communicate to DHS. A personal choice selection may not be applied to the federally mandated exclusions that are described under 42 USC 1320a-7.

*Michigan Services Administration Bulletin (MSA 14-40)
Issued September 2, 2014; effect of October 2, 2014*

Petitioner argues that the Provider has worked in Home Help Services for years and should be paid for the work that he has performed for her from [REDACTED] forward. No one told her that she had to wait for the criminal background check to occur and that the Provider had already been cleared through a criminal background check on his current clients.

Respondent argues that the denial is based upon the criminal history screening results that revealed the Petitioner has been convicted of an excludable crime(s) that disqualified Petitioner from participating in the Home Help Program as a provider until Petitioner signed the Personal choice Selection under 42 USC 1320a-7.

The facts are not in dispute.

Personal Choice and Acknowledgement of Provider Selection: A participant receiving personal care services through the Medicaid Home Help program may select any family member or other individual to provide such services subject to the following restrictions:

- The provider does not have a disqualifying conviction that is one of the four Mandatory Exclusions under 42 USC 1320a-7
- The provider is not legally responsible for the participant.
- The provider is capable of providing the required services and is otherwise qualified to do so.
- The provider has successfully undergone a criminal history screening conducted by MDCH and has received notification of a successful determination.

A participant may request to select a provider who has been determined ineligible as a result of a Permissive Exclusion identified through the criminal screening process. The request must be submitted on a form specified by MDCH. The participant must provide a signed acknowledgement that indicates receipt of notification of the criminal offense(s) which prompted the exclusion and must indicate their selection of that provider to deliver services. The selection shall not be considered effective until the signed acknowledgement has been received, processed, and recorded by MDCH and communicated to DHS.

A personal choice selection may not be applied to the federally mandated exclusions that are described under 42 USC 1320a-7. A personal choice selection may be applied to permissive exclusions for the limited purpose of providing HHS to the specific individual identified in the request. A personal choice selection through this section shall not be construed.

*Medical Services Administration Bulletin MSA-14-40
Excludable Convictions for Medicaid Home Help Program
Personal Care Service Providers, page 3)*

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. *ASM 135, page 4.*

With respect to the authorization of payments, Adult Services Manual 140 (11-1-2011) (hereinafter "ASM 140") states:

ADULT SERVICES AUTHORIZED PAYMENTS (ASAP)

The Adult Services Authorized Payments (ASAP) is the Michigan Department of Community Health payment system that processes adult services authorizations. The adult services specialist enters the payment authorizations using the **Payments** module of the **ASCAP** system.

No payment can be made unless the provider has been enrolled in Bridges. Adult foster care, homes for the aged and home help agency providers must also be registered with Vendor Registration; see ASM 136, Agency Providers.

Note: The adult services home page provides a link to the provider enrollment instructions located on the Office of Training and Staff Development web site.

Home help services payments to providers must be:

- *Authorized for a specific period of time and payment amount.* The task is determined by the comprehensive assessment in ASCAP and will automatically include tasks that are a level three or higher.
- Authorized **only** to the person or agency actually providing the hands-on services.

Note: An entity acting in the capacity of the client's fiscal intermediary is not considered the provider of home help and must not be enrolled as a home help provider; see ASM 135, Home Help Providers.

- Made payable jointly to the client and the provider.

Exception: Authorizations to home help agency providers are payable to the provider only. There are circumstances where payment authorizations to the provider only are appropriate, for example, client is physically or mentally unable to endorse the warrant. All single party authorizations must be approved by the supervisor.

- Prorate the authorization if the MA eligibility period is less than the full month. [ASM 140, page 1 of 3 (italics added).]

The Department has established by a preponderance of the evidence that it was acting in accordance with Department policy when it determined that payment for Petitioner's HHS services began on [REDACTED], the date the provider's enrollment in the Michigan Medicaid Program as a Home Help Provider was completed. The completion of enrollment came after the Petitioner signed a personal choice selection for the provider indicating that she acknowledged that she received notice of the criminal offense (s) which prompted the exclusion and indicating her selection of the provider to deliver services.

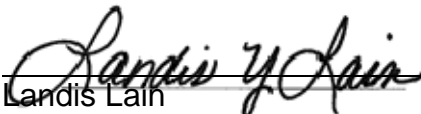
DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department's determination that Petitioner's HHS payments to the Petitioner's provider should start on [REDACTED]

IT IS, THEREFORE, ORDERED that:

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

LL [REDACTED]



Landis Lahn
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

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 Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS 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. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30763
Lansing, Michigan 48909-8139

DHHS

[REDACTED]

Petitioner

[REDACTED]

Agency Representative

[REDACTED]

DHHS Department Rep.

[REDACTED]

DHHS -Dept Contact

[REDACTED]