



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: [REDACTED]
MAHS Docket No.: 16-000628
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Colleen Lack

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]. [REDACTED], the Petitioner, appeared on his own behalf. [REDACTED], son, and [REDACTED], son, appeared as witness for the Petitioner. [REDACTED], Appeals Review Officer, represented the Department of Health and Human Services (Department). [REDACTED], Department Analyst, [REDACTED], Adult Services Supervisor, and [REDACTED], Adult Services Worker, appeared as witness for the Department.

During the hearing proceedings, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-22.

ISSUE

Did the Department properly determine that Petitioner's son [REDACTED] could not be enrolled as the HHS provider, resulting in Petitioner's Home Help Services (HHS) case remaining suspended until a new provider can be enrolled?

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 beneficiary who has been authorized for HHS since [REDACTED]. (Exhibit A, p. 11)

2. Petitioner's son [REDACTED]. had been his HHS provider. (Exhibit A, p. 15)
3. On [REDACTED], the Department sent Petitioner an Advance Negative Action Notice informing him that the HHS authorization would be suspended effective [REDACTED], because a criminal history screen showed that the current HHS provider was found to have a mandatory exclusion. (Exhibit A, pp.6-9)
4. Around [REDACTED], Petitioner's other son [REDACTED]. began caring for Petitioner and a request was made to have [REDACTED]. enrolled as Petitioner's HHS provider. (Exhibit A, p. 4)
5. The criminal history screen for [REDACTED]. showed a felony conviction for controlled substance-delivery/manufacture marijuana with an offense date of [REDACTED] and a sentence date of [REDACTED] (Exhibit A, p. 18)
6. On [REDACTED], a letter was sent to [REDACTED] informing him that he could not be enrolled as an HHS provider due to a criminal history screening. (Exhibit A, p. 17)
7. Petitioner's Request for Hearing was received by the Michigan Administrative Hearing System on [REDACTED], contesting the continued suspension of his HHS case and not allowing [REDACTED]. to be the new HHS provider. Petitioner included documentation that the conviction for [REDACTED] was set aside. (Exhibit A, pp. 4-5)

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.

The client has the right to choose the home help provider(s). Adult Services Manual (ASM) 135, [REDACTED], p. 1.

However, a policy bulletin from the Medical Services Administration (MSA) addresses personal care providers, which included HHS providers, and criminal history screening.

Mandatory Exclusions: Providers (any individual or entity) MUST be screened for and, as required by the State of Michigan, MUST disclose the following excludable convictions. Any applicant or provider found to meet one of these four categories is prohibited from participating as a

services provider for Medicaid or the Home Help Program. The mandatory exclusion categories are:

1. Any criminal convictions related to the delivery of an item or service under Medicare (Title XVIII), Medicaid (Title XIX) or other state health care programs (e.g., Children's Special Health Care Services, Health Kids), (Title V, Title XX, and Title XXI)
2. Any criminal convictions under federal or state law, relating to neglect or abuse of patients in connection with the delivery of a health care item or service
3. Felony convictions **occurring after August 21, 1996**, relating to an offence, under federal or state law, in connection with the delivery of health care items or services or with respect to any act or omission in a health care program (other than those included in number 1 above) operated by or financed in whole or in part by any federal, state, or local government agency, of a criminal offense consisting of a felony relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct
4. Felony convictions occurring after August 21, 1996, under federal or state law, related to unlawful manufacture, distribution, prescription, or dispensing of a controlled substance

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

- A judgement of conviction has been entered against the individual or entity by a federal, state, or local court, regardless of whether there is an appeal pending or whether the judgement of conviction or other record relating to the criminal conduct has been expunged.
- A finding of guilt against the individual or entity by a federal, state, or local court,
- A plea of guilty or nolo contendere by the individual or entity has been accepted by a federal, state, or local court, or
- An individual or entity that has entered into participation in a first offender, deferred adjudication, or other arrangement or program where judgement of conviction has been withheld.

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(Exhibit A, pp. 19-20)

(Underline added by ALJ)

Petitioner is a Medicaid beneficiary who has been authorized for HHS since [REDACTED]. (Exhibit A, p. 11) Petitioner's son [REDACTED] had been his HHS provider. (Exhibit A, p. 15)

On [REDACTED], the Department sent Petitioner an Advance Negative Action Notice informing him that the HHS authorization would be suspended effective [REDACTED], because a criminal history screen showed that the current HHS provider was found to have a mandatory exclusion. (Exhibit A, pp.6-9)

Around [REDACTED], Petitioner's other son [REDACTED] began caring for Petitioner and a request was made to have [REDACTED] enrolled as Petitioner's HHS provider. (Exhibit A, p. 4)

The criminal history screen for [REDACTED] showed a felony conviction for controlled substance-delivery/manufacture marijuana with an offense date of [REDACTED] and a sentence date of [REDACTED]. (Exhibit A, p. 18) Accordingly, on [REDACTED] a letter was sent to [REDACTED] informing him that he could not be enrolled as an HHS provider due to a criminal history screening. (Exhibit A, p. 17)

Petitioner asserted that [REDACTED] should be allowed to be his HHS provider because the conviction was expunged. Petitioner submitted documentation that the conviction for [REDACTED] was set aside. (Exhibit A, p. 5) However, the above cited MSA 14-31 bulletin specifies that for the mandatory exclusion from being an enrolled HHS provider, an individual is considered to have been convicted of a criminal offense even when the conviction has been expunged. Accordingly, the Department's determination that Petitioner's son E.B. could not be enrolled as the HHS provider, and therefore Petitioner's HHS case remained suspended, must be upheld.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly determined that Petitioner's son E.B. could not be enrolled as the HHS provider, resulting in Petitioner's Home Help Services (HHS) case remaining suspend until a new provider can be enrolled.

IT IS, THEREFORE, ORDERED that:

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

CL/cg



Colleen Lack
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]

Agency Representative

[REDACTED]

Petitioner

[REDACTED]

DHHS Department Rep.

[REDACTED]

DHHS -Dept Contact

[REDACTED]