



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

IN THE MATTER OF:

MAHS Docket No.: 16-017455

██████████
██████████

Agency Case No.: ██████████

v

Case Type: HHP

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██
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**Issued and entered
this 23rd day of February, 2017
by:
Steven Kibit
Administrative Law Judge**

PROPOSAL FOR DECISION

This matter is before the Michigan Administrative Hearing System (MAHS) pursuant to MCL 400.1 *et seq.*; the Michigan Administrative Code (MAC) Rules (R) 400.3402-400.3425, MAC R 792.10904-792.10906; and MCL 24.271 *et seq.*

After due notice, a telephone hearing was held on January 25, 2017. Petitioner appeared and testified on her own behalf. ██████████, Appeals Review Officer, represented the Respondent Michigan Department of Health and Human Services (DHHS or Department). ██████████ Departmental Analyst, testified as a witness for the Department.

ISSUE

Did the Department properly deny Petitioner's request for enrollment as a home help provider working for an agency?

FINDINGS OF FACT

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

1. In January of 2014, Petitioner was charged with two felony counts of fraudulent activities: 400.609(1)(b) Welfare Fraud over \$500 and 400.60(2)(b) Welfare Fraud (Failure to Inform) \$500 or more. (Exhibit A, page 7)
2. On February 7, 2014, Petitioner pleaded guilty to misdemeanor attempted welfare fraud (failure to inform) \$500 or more. (Exhibit A, pages 7, 14; Testimony of Petitioner).
3. On July 7, 2016, the Department sent all Agency Providers of HHS a written letter notifying them of new requirements for enrollment in the Community Health Automated Medicaid Processing System (CHAMPS). (Exhibit A, pages 9-11).
4. In part, that letter stated that agency providers must update their CHAMPS record for all employees by October 1, 2016; the Department would conduct a criminal history screening for all employees in the agency with direct access to beneficiaries; and that a criminal conviction for such an individual for any crime identified elsewhere as a basis for mandatory or permissive exclusion from the program would disqualify the agency from participating in the Home Help Program. (Exhibit A, pages 9-11).
5. Subsequently, an Agency Provider attempted to enroll Petitioner as a home help provider. (Testimony of Departmental Analyst).
6. The results of Petitioner's criminal history screening revealed her misdemeanor conviction and the Department determined that she could not be enrolled as a Home Help provider working for an agency. (Testimony of Departmental Analyst).
7. On November 7, 2016, the Department sent Petitioner's agency a similar written notice that she had been denied enrollment as a provider working for an agency due to the results of her criminal history screening. (Exhibit A, pages 12-13).
8. That same day, the Department sent Petitioner's agency a similar written notice. (Exhibit A, pages 5-7).

9. On November 30, 2016, the Michigan Administrative Hearing System received the request for hearing filed by Petitioner in this matter regarding that denial. (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 statutes, 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 enrolled individuals or by private or public agencies.

With respect to Home Help providers and criminal history screenings, Medical Services Administration (MSA) Bulletin 14-31, effective July 31, 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 . . . 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.

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 service 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, Healthy 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 offense, 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 judgment 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 judgment of conviction or other record relating to 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 judgment of conviction has been withheld.

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.

Program-approved provider agencies are required to assure that a criminal history screening of all individuals in their employment providing in-home services has been conducted. Such agencies are also required to provide similar screenings on the following agency personnel:

- Any individual with an ownership interest in the agency,
- **Any individual providing services on behalf of the agency or individual who has direct access to a client,** patient or resident or to a client's, patient's or resident's property, financial information, medical records, treatment information, or any other identifying information, or
- Any person providing services to client, patient or resident for which the agency is reimbursed under Medicaid.

All providers will be required to revalidate their Medicaid enrollment information for the purposes of subsequent criminal history screenings a minimum of once every three years, or more often if requested by MDCH. MDCH will notify providers when revalidation is required. **Providers are reminded that they must notify MDCH within 10 business days of any change to their enrollment**

information. Failure to do so will result in termination of provider enrollment.

Exclusions: For any provider found to be in violation of any of the four mandatory exclusions listed above, MDCH shall terminate or deny enrollment in the Michigan Medicaid program . . .

* * *

Notifications: MDCH will notify applicants or providers within 10 business days of conducting an ineligible criminal history screening. The department will concurrently notify all affected program beneficiaries and necessary Department of Human Services (DHS) staff.

Reviews and Appeals: Provider applicants and enrolled providers may request an administrative redetermination of the criminal history screening process if the criminal history record is inaccurate. Such a request must be made in writing to the department and must identify the specific information being challenged as well as what the individual feels to be the correct information. Negative actions based on an accurate criminal history are not subject to appeal, except as provided below.

Providers who are providing services to a client prior to the effective date of this policy may appeal a decision to terminate or deny enrollment. Denial of enrollment due to a temporary enrollment moratorium is appealable, but the scope of review is limited to whether the temporary moratorium applies to the provider appealing the denial. The basis for imposing a temporary moratorium is not subject to review. After termination from the Medicaid program, the provider must contact MDCH to request re-enrollment as a Medicaid provider and reinstatement of billing privileges. Providers whose enrollment has been denied are not prohibited from submitting a request for subsequent re-enrollment.

Additionally, MSA 14-40, effective October 2, 2014, also 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.**

* * *

Excludable Convictions: Excludable convictions fall into two general categories. Mandatory exclusions, as discussed in Bulletin MSA 14-31, are those set forth in the Social Security Act (42 USC 1320a-7[a]) and shown in the first bullet below. Permissive exclusions are allowed under part (b) of that section. The Act (42 USC 1396t[f][1][A]) states that "[n]othing in the Act shall be construed as preventing States from imposing requirements that are more stringent than the requirements published or developed by the Secretary." Finally, 42 CFR 441.570 requires the State to assure that "[n]ecessary safeguards have been taken to protect the health and welfare of enrollees." **Permissive exclusions within the context of this policy are reflected in the second bullet and sub-bullets below.** Based on these guidelines and subject to the Personal Choice and Acknowledgement of Provider provision, the Medicaid Home Help program shall not employ, independently contract with, or otherwise authorize or reimburse for services any individual who has direct access to or provides direct services to program participants if the individual has received a criminal history screening from MDCH that indicates one or more of the following:

- Convictions associated with program-related fraud and patient abuse, health care fraud, and felony controlled substance crimes. These exclusions are mandated and defined under 42 USC 1320a-7 and articulated in Bulletin MSA 14-31.
- **Conviction of crimes directly relatable to neglect, physical and sexual abuse, financial exploitation, inappropriate involuntary restraint, providing unqualified health care 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 and defined in the Public Health Code Act 368 of 1978, specifically Public Act 28 Sec. 20173a(1) (MCL333.20173a[1]). This list includes, but is not limited to crimes that:**
 - **Involve the intent to cause death or serious impairment of a body function;**
 - **Result in death or serious impairment of a body function;**
 - **Involve the use of force or violence;**
 - **Involve the threat of force or violence;**
 - **Involve cruelty or torture;**
 - **Involve criminal sexual conduct;**
 - **Involve abuse or neglect;**
 - **Involve the use of a firearm or a dangerous weapon;**
 - **Involve larceny, theft, or embezzlement;**
 - **Involve a felony Driving Under The Influence (DUI);**
 - **Involve an assault, battery, or the threat thereof;**
 - **Involve a crime against a "vulnerable adult";**
 - **Involve retail fraud; or**
 - **State that the conviction is a felony reduced to a misdemeanor.**

For the purposes of the laws 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, or local court, regardless whether an appeal is pending or whether the judgment of conviction or other record relating to criminal conduct has 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 a federal, state, or 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 or as deemed necessary for the protection of a Medicaid beneficiary.

* * *

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 history 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 Home Help services to the specific individual identified in the request.

A personal choice selection through this section shall not be construed as approval, authorization or permission to provide services to other participants or through other programs. Providers selected through the personal choice provisions of this section will be registered in the Community Health Automated Medicaid Processing System (CHAMPS) and other systems for the purposes of monitoring, contacting, and generating payments, however, such individuals shall be prohibited from either being placed in the provider referral database or receiving referrals for additional clients through that process.

Reviews and Appeals: Individuals may request an administrative redetermination of the criminal history screening, but such a review is limited solely to the accuracy of the information used for the screening. Negative actions based on accurate criminal history are not subject to appeal, except as provided below. A review will not be granted to contest the merits of the court findings.

Providers who are authorized to furnish services for a program participant prior to the effective date of this policy may appeal a decision to terminate or deny their provider enrollment. Denial of provider enrollment due to a temporary enrollment moratorium is appealable, but the scope of review is limited to whether the temporary moratorium applies to the provider appealing the denial. The basis for imposing a temporary moratorium is not subject to review.

After termination from the Medicaid program, the provider must contact MDCH to request re-enrollment as a Medicaid provider and reinstatement of billing privileges.

*MSA 14-40, pages 1-4
(Emphasis added)*

On or about July 7, 2016, the Department also sent Agency Providers Numbered letter 13-64. In part, that letter provided:

The purpose of this letter is to provide information for agencies that provide services in the Medicaid Home Help program. It describes new requirements for enrollment in CHAMPS, criminal history screening and reporting services. In 2014 and 2015, the Michigan Department of Health and Human Services (MDHHS) issued policy bulletins regarding these requirements. This letter describes how those policies apply to Home Help agency providers. The bulletins include:

- MSA 14-31, Personal Care Provider Criminal History Screening
- MSA 14-40, Excludable Convictions for Medicaid Home Help Program Personal Care Service Providers
- MSA 14-58, Provider Enrollment and Service Verification
- MSA 15-13, Changes in Home Help Agency Standards

* * *

As of June 1, 2015, all new Home Help providers were required to enroll in the Community Health Automated Processing System (CHAMPS). Existing providers were converted from BRIDGES into CHAMPS. Those agencies must now update their CHAMPS record. Updating the agency's CHAMPS record includes identifying agency owners and assuring that other information is current. Instructions for registering for MI Login and CHAMPS are located on the Home Help website under "Agency Information".

In addition, all employees and contract workers of Home Help agencies (1) **must** enroll in CHAMPS and (2) **must** associate to the agency for whom they work. "Associating to

an agency,” means that the employee or contract worker identifies the agency he or she works for by entering the agency’s CHAMPS Provider Identification number in the “Associate Billing Provider” step. Instructions for this process are on the Home Help website under “Agency Information”.

Agencies must update their CHAMPS records and employees and contract workers must enroll in CHAMPS and associate to their agency by October 1, 2016. Agencies are responsible for ensuring that their employees or contract workers comply by the deadline. Failure to comply may result in the agency’s disenrollment from the Home Help program and recoupment of payments for services provided by an employee or contract worker who was not registered in CHAMPS at the time of service delivery.

* * *

CRIMINAL HISTORY SCREENING

CHAMPS conducts criminal history screening. For agencies, criminal history screening will be conducted for the following personnel:

- Any individual with an ownership interest in the agency.
- Any individual providing Home Help services on behalf of the agency.
- Individuals who have direct access to a beneficiary and/or the beneficiary’s property, financial information, medical records, treatment information or any other identifying information.

A criminal conviction, whether mandatory or permissive, for any of the personnel cited above disqualifies an agency from participating in the Home Help program. The Acknowledgement of Personal Selection option described in bulletin MSA 14-40, which allows the beneficiary to select a provider with a criminal conviction, is only applicable for individual Home Help providers.

AGENCY APPROVAL PROCESS

Agencies seeking to provide services in the Home Help program must complete two steps:

- Enroll in CHAMPS and pass the criminal history screening
- Submit the required documentation to MDHHS; these requirements can be found at the Home Help website under “Agency Information”

*Exhibit A, pages 11-13
L 16-34, pages 1-3
(Emphasis added)*

Here, as discussed above, Petitioner was denied enrollment as a provider working for an Agency Provider due to the results of her criminal history screening.

In support of that decision, the Departmental Analyst witness described the applicable policies for criminal history screenings and employees of agency providers as outlined in the above bulletins and the numbered letter the Department sent out.

She also testified that Petitioner’s conviction qualified as a permissive exclusion rather than a mandatory exclusion because it is not program-related fraud, and that all permissive exclusions are enough to disqualify an employee of an agency provider from the program, as opposed to individual provider who can get a client to sign an acknowledgement of the conviction and a request that the individual provider still provide his or her services. She further testified that there is no published list of convictions that warrant a permissive exclusion, but that the above policies state that the list of crimes is not limited to the types identified in the bulletin and that she was given a list of all Michigan felonies to screen for. The Departmental Analyst also testified that, while Petitioner was not convicted of a felony, she was charged with a felony and, per the bulletin, the list of crimes that lead to a permissive exclusion includes convictions where a felony is reduced to a misdemeanor.

In response, Petitioner testified that this decision is ruining her life. She also testified that she only pleaded guilty to the misdemeanor because she was told to and that no one ever said that it would affect her ability to work later.

However, even accepting all of Petitioner’s testimony as true, the undisputed evidence and applicable policies still demonstrate that the Department’s decision was correct and should be affirmed. While Petitioner’s conviction for misdemeanor attempted welfare fraud does not fall within the general descriptions provided in MSA 14-40 of crimes that qualify for permissive exclusions, MSA 14-40 also directly references convictions for crimes identified in MCL 333.20173a(1) as convictions that warrant a permissive exclusion and that statute encompass Petitioner’s conviction. Specifically, MCL 333.20173a(1)(e)(vii) includes any misdemeanor involving fraud if the conviction

occurred within the five (5) years immediately preceding the date of application for employment. Petitioner's misdemeanor conviction for attempted welfare fraud occurred within the five years prior to the request for enrollment and, while she may now argue that she would not have pleaded guilty if she would have known the effect the conviction would have, the Department's decision was proper under the applicable policies.

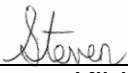
PROPOSED DECISION

Now therefore, based on the above findings of fact and conclusions of law, the undersigned Administrative Law Judge recommends that the Department's decision to deny Petitioner's request for enrollment as a home help provider working for an agency 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 Health and Human Services, P.O. Box 30639, 611 W. Ottawa, 2nd Floor, Lansing, Michigan 48909-8143. Exceptions shall be served on all parties.

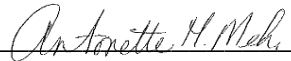
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Steven Kibit
Administrative Law Judge

PROOF OF SERVICE

I hereby state, to the best of my knowledge, information and belief, that a copy of the foregoing document was served upon all parties and/or attorneys of record in this matter by Inter-Departmental mail to those parties employed by the State of Michigan and by UPS/Next Day Air, facsimile, and/or by mailing same to them via first class mail and/or certified mail, return receipt requested, at their respective addresses as disclosed below this 23rd day of February, 2017.



Antonette Mehi

Michigan Administrative Hearing System

[Redacted]

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