



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: August 18, 2017
MAHS Docket No.: 17-006195
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Colleen Lack

HEARING DECISION

Following Petitioner’s request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 42 CFR 438.400 to 438.424; 45 CFR 99.1 to 99.33; and 45 CFR 205.10; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on July 19, 2017, from Lansing, Michigan. [REDACTED], the Petitioner, appeared on her own behalf. The Department of Health and Human Services (Department) was represented by [REDACTED], Hearing Facilitator.

Petitioner had two telephone hearings scheduled for July 19, 2017, MAHS Docket No. 17-006697 at 10:00 am and MAHS Docket No. 17-006195 at 10:30 am. Both hearings involved actions taken by the Department. Accordingly, the telephone hearing proceedings were held in conjunction, but separate Hearing Decisions will be issued for each case.

During the hearing, the following exhibits were admitted into the record:

- Exhibit A Department’s Hearing Summary Packet for MAHS Docket No. 17-006195 (pp. 1-3)
- Exhibit B Department’s Hearing Summary Packet for MAHS Docket No. 17-006697 (pp. 1-3)
- Exhibit 1 Copies of applications the Department has received from Petitioner’s household (pp. 1-365)

ISSUES

Did the Department properly determine the amount of State Disability Assistance (SDA) Petitioner is eligible for?

Did the Department properly fulfill their responsibilities to provide information and assistance regarding the Home Help Services (HHS) program when Petitioner inquired about chore provider/caregiver assistance?

FINDINGS OF FACT

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

1. Between September 2014 and March 2017, Petitioner submitted numerous applications for the Food Assistance Program (FAP), State Emergency Relief (SER), cash assistance (which includes SDA), and Child Development and Care (CDC). (Exhibit 1, pp. 1-365)
2. Petitioner lives with, but is not married to, [REDACTED] ([REDACTED]), and their children. (Exhibit 1, pp. 1-365)
3. At some point, Petitioner was approved for SDA as a caregiver for [REDACTED]. Petitioner receives a total of \$ [REDACTED] per month in SDA benefits. (Exhibit A, pp. 2-3; Petitioner and Hearing Facilitator Testimony)
4. In [REDACTED] County, the Department's [REDACTED] District office handles all HHS cases for the entire county. (Hearing Facility Testimony)
5. Petitioner asserts that she has been asking about chore provider assistance since about October 2014, but the Department's [REDACTED] District office failed to fulfill their responsibility to provide information and assistance with this Department program. (Exhibit A, pp. 2-3)
6. Petitioner was not approved for HHS until May 2, 2017. (Petitioner Testimony)
7. On May 15, 2017, the Michigan Administrative Hearing System received Petitioner's hearing request contesting the amount of the SDA payment and requesting back payment for HHS from October 2014 through April 2017. (Exhibit A, pp. 2-3)

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference

Tables Manual (RFT), and Department of Health and Human Services Adult Services Manual (ASM).

The State Disability Assistance (SDA) program is established by the Social Welfare Act, MCL 400.1-.119b. The Department of Health and Human Services (formerly known as the Department of Human Services) administers the SDA program pursuant to 42 CFR 435, MCL 400.10 and Mich Admin Code, R 400.3151-.3180.

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 Department has multiple cash assistance programs, including SDA. BEM 261 addresses SDA, in pertinent part:

To receive SDA, a person must be disabled, caring for a disabled person, or age 65 or older.

CARETAKER OF A DISABLED PERSON

A caretaker of a disabled person may receive SDA provided that the assistance of the caretaker is medically necessary for at least 90 days and the caretaker and the disabled person live together.

Assistance means personal care services and includes meal preparation, laundry, food shopping, errands, light cleaning, non-nursing personal care (bathing, dressing, etc.) and assistance with medication.

The disabled person does not have to be related to the caretaker or receive SDA.

BEM 261, April 1, 2017¹, pp. 1 and 4.
(Underline added by ALJ)

¹ These portions of the BEM 261 have remained the substantially the same since at least July 2014.

RFT 225 addresses the SDA monthly assistance payment standards table. For all applications on or after October 1, 2011, the individual monthly SDA payment amount is \$ [REDACTED] per month. RFT 225, December 1, 2013, p. 1.

BAM 105 addresses rights and responsibilities, in pertinent part the local office responsibilities include:

Informing the Client

All Programs

Inform people who inquire about:

- The MDHHS programs available, including domestic violence comprehensive services.
- Their right to apply.

Provide specific eligibility information on all programs in which they are interested.

Assisting the Client

All Programs

The local office must assist clients who ask for help in completing forms, gathering verifications, and/or understanding written correspondence sent from the department.

BAM 105, October 1, 2016², pp. 14-15.

BAM 110 addresses Application filing and Registration, including the specialist district offices in [REDACTED] County:

WHERE TO APPLY/ PROCESS APPLICATIONS

In [REDACTED] County, specialized districts process applications for individuals in supervised settings, or living arrangements, including (list omitted by ALJ)

² These portions of the BAM 105 have remained the substantially the same since at least April 2014.

If a client contacts a local office in error:

- Give or send the client an application and the address and phone number of the correct office.
- If the client chooses to complete the application and turns it in at an office which will not be processing the application, do the following:
 - Accept and register it as an application or request as appropriate.
 - Mail it promptly to the correct office so the transfer-in office may act within the standard of promptness; see BAM 115.

BAM 110, January 1, 2017³, pp. 16-17.

ASM 101 address available services, including the HHS program:

Payment Services Home Help

Home help services are non-specialized personal care service activities provided under the independent living services program to persons who meet eligibility requirements.

Home help services are provided to enable individuals with functional limitation(s), resulting from a medical or physical disability or cognitive impairment to live independently and receive care in the least restrictive, preferred settings.

Home help services are defined as those tasks which the department is paying for through Title XIX (Medicaid) funds. These services are furnished to individuals who are **not** currently residing in a hospital, nursing facility, licensed foster care home/home for the aged, intermediate care facility (ICF) for persons with developmental disabilities or institution for mental illness.

³ These portions of the BAM 110 have remained the substantially the same since at least July 2014.

These activities **must** be certified by a Medicaid enrolled medical professional and may be provided by individuals or by private or public agencies. **The medical professional does not prescribe or authorize personal care services.** Needed services are determined by the comprehensive assessment conducted by the adult services specialist.

Personal care services which are eligible for Title XIX funding are limited to:

Activities of Daily Living (ADL)

- Eating.
- Toileting.
- Bathing.
- Grooming.
- Dressing.
- Transferring.
- Mobility.

Instrumental Activities of Daily Living (IADL)

- Taking medication.
- Meal preparation/cleanup.
- Shopping for food and other necessities of daily living.
- Laundry.
- Light housecleaning.

An individual must be assessed with at least one activity of daily living (ADL) ranked 3 or higher or complex care need in order to be eligible to receive home help services.

Services not Covered by Home Help

Home help services must **not** be approved for the following:

- Supervising, monitoring, reminding, guiding, teaching or encouraging (functional assessment rank 2).
- Services provided for the benefit of others.

- Services for which a responsible relative is **able** and **available** to provide (such as house cleaning, laundry or shopping). A responsible relative is defined as an individual's spouse or a parent of an unmarried child under age 18.
- Services provided by another resource at the same time (for example, hospitalization, MI-Choice Waiver).
- Transportation - See Bridges Administrative Manual (BAM) 825 for medical transportation policy and procedures.
- Money management such as power of attorney or representative payee.
- Home delivered meals.
- Adult or child day care.
- Recreational activities. (For example, accompanying and/or transporting to the movies, sporting events etc.)

Note: The above list is not all inclusive.

Adult Services Manual (ASM) 101,
August 1, 2016⁴, pp. 1-5 of 5
(Underline added by ALJ)

In part, Petitioner's hearing request indicates disagreement with the amount of the SDA benefit. Petitioner is receiving, a total of \$ [REDACTED] per month in SDA benefits. (Exhibit A, pp. 2-3) The amount of the SDA payment an individual is eligible for is set at \$ [REDACTED] per month, as stated in the above cited RFT 225 policy. For the SDA program, this is always a set amount, regardless of the amount of assistance the caretaker provides to the disabled individual. Accordingly, the available evidence establishes that the Department properly determined the amount of Petitioner's SDA benefit.

The available information is not as clear regarding whether the Department fulfilled their responsibilities to provide information and assistance regarding the HHS program when Petitioner inquired about chore provider/caregiver assistance. Petitioner asserts that she inquired about this type of assistance on numerous applications filed since September 2014. Petitioner also noted that the DHS 1171 Assistance Applications do

⁴ These portions of the ASM 101 have remained the substantially the same since at least December 2013.

not say anything about the Department having a chore provider program. (Exhibit 1, pp. 1-365; Petitioner Testimony)

Petitioner indicated that in July 2016, she submitted a DHS-54A Medical Needs form for [REDACTED], but this local office still did not tell her to go to the Department's District office that handles the HHS program in her county. Petitioner was not approved for HHS until May 2, 2017, and is seeking back pay for services provided from October 2014 through April 2017. (Exhibit A, pp. 2-3; Petitioner Testimony) It is noted that the Department's DHS-54A Medical Needs form is used for multiple programs, not just HHS. Accordingly, if a DHS-54A Medical Needs form was submitted to the Department in the context of another program, this would not necessarily indicate an inquiry about or intent to apply for HHS.

The above cited BAM policies set forth the local Department office responsibilities, which include providing information and assistance regarding Department programs. Accordingly, the local Department office should provide information about the HHS program, including the appropriate application form, and assistance to individuals inquiring about that type of assistance. While this ALJ understands that in [REDACTED] County, HHS is handled by a different local office, this local Department office can still provide information, Department forms, and even forward an application for HHS submitted at their office to the appropriate local Department office. The Hearing Summary stating "this section of DHHS does not make determinations regarding chore provider services" does not establish whether this local office fulfilled their responsibilities to provide information about, any assistance regarding, the HHS program. (Exhibit A, p. 1) If anything, this statement indicates that this local office may have improperly failed to provide information or assistance regarding HHS because their office does not handle that program.

However, once Petitioner was approved for SDA as a caretaker for a disabled person, it appears she would not also be eligible to be paid as a HHS provider for that same individual for the same time periods. As cited above, BEM 261 and ASM 101 indicate both programs are compensating for assistance with the same types of personal care services. ASM 101 specifies the HHS cannot be approved for services provided by another resource at the same time.

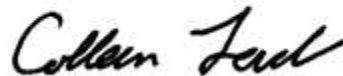
Additionally, as discussed during the hearing proceeding, there is no remedy this ALJ could order at this time even if the Department had failed to fulfill their responsibilities to provide information and assistance regarding the HHS program when Petitioner inquired about chore provider/caregiver assistance. The only remedy this ALJ could order regarding a failure to act on a claim for services in such circumstance would be to order the Department to provide information/assistance about the program and to process any referrals/application for HHS for which no determination had been made. That would not be needed in this case because Petitioner testified she was approved as a HHS provider for [REDACTED] as of May 2, 2017. This ALJ has no authority to order any type of equitable relief.

This ALJ is also unable to find any policy regarding issuing supplemental retroactive benefits due to an alleged under issuance that would apply to this situation regarding the HHS program. HHS payments cannot begin prior to the date the HHS application (DHS-390) is submitted nor before the HHS provider completes the provider enrollment process. ASM 115, August 1, 2016, pp. 1-2; ASM 140, August 1, 2016, p. 1. For example, the BAM 400, October 1, 2015, p. 2 policy regarding issuing a supplement when benefits are authorized to correct under issuances would not apply to this circumstance because there can be no HHS payment prior to the application date nor prior to completion of the HHS provider enrollment process. Further, BAM 405 specifies it applies to the Family Independence Program (FIP), Refugee Cash Assistance (RCA) program, and SDA program.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department acted in accordance with Department policy when it determined the amount of Petitioner's SDA benefit; but failed to satisfy its burden of showing that it acted in accordance with Department policy regarding fulfilling their responsibilities to provide information and assistance regarding the HHS program when Petitioner inquired about chore provider/caregiver assistance.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED IN PART** with respect to the SDA payment amount and **REVERSED IN PART** with respect to the Department fulfilling their responsibilities to provide information and assistance regarding the HHS program when Petitioner inquired about chore provider/caregiver assistance. As discussed above, there is no remedy that can be ordered to address any failure by the Department to fulfill their responsibilities to provide information and assistance regarding the HHS program in this circumstance.



CL/db

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]

Petitioner

[REDACTED]