



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

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Date Mailed: February 28, 2020
MOAHR Docket No.: 19-012453
Agency No.: ██████████
Petitioner: ██████████

ADMINISTRATIVE LAW JUDGE: Colleen Lack

DECISION AND ORDER

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 *et seq*; 42 CFR 438.400 *et seq*; and Mich Admin Code, R 792.11002.

After due notice, a hearing was held on January 23, 2020. ██████████, the Petitioner, appeared on her own behalf. Emily Piggott, Appeals Review Officer, represented the Department of Health and Human Services (Department). Carol Stahl, Adult Services Worker (ASW), and Kelly Neve, Adult Services Supervisor, appeared as witnesses for the Department.

During the hearing proceeding, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-74.

ISSUE

Did the Department properly terminate Petitioner's Home Help Services (HHS) case?

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 ██████-year-old Medicaid beneficiary (date of birth J██████████ 1977) that has had an open HHS case since July 13, 2005. (Exhibit A, p. 10)
2. On December 12, 2011, Petitioner's doctor completed a DHS-54A Medical Needs form. The listed diagnoses appear to be dysrhythmia disorder, arthritis, and chronic low back pain. In section I, the doctor did not check "YES" or "NO" to certify whether Petitioner has a medical need for assistance with any of the listed personal care activities. (Exhibit A, p. 17)

3. On August 29, 2019, the ASW completed a face to face contact with Petitioner and her provider for a 6-month review of the HHS case. In part, Petitioner was given a new DHS-54A Medical Needs form for her medical provider to complete. (Exhibit A, p. 18)
4. On September 20, 2019, a DHS-1212 Negative Action notice was issued to Petitioner stating the HHS case would be suspended effective October 4, 2019. The Medical Needs form given to Petitioner at the August 29, 2019, reassessment had not been returned. If a new Medical Needs form was not returned on or before October 4, 2019, the case must be suspended. Another DHS-54A Medical Needs form was included. (Exhibit A, p. 20)
5. On October 11, 2019, the Department received a DHS 54A Medical Needs form indicating it was completed by Petitioner's nurse practitioner on September 23, 2019. Section I was marked "YES" to certify that Petitioner has a medical need for assistance with listed personal care activities and multiple activities were circled. However, defer to PCP was also noted in several sections. (Exhibit A, p. 21)
6. On October 14, 2019, the ASW spoke with the nurse practitioner's office, who indicated the nurse practitioner did not recommend any services, but put "defer to PCP" on the form. The medical provider's office asked the ASW to fax the 54A Medical Needs form as the Department received it to their office to confirm that the nurse practitioner did not fill out section I. (Exhibit A, p. 24; ASW Testimony)
7. On October 15, 2019, the nurse practitioner's office confirmed that the nurse practitioner did not fill out section I nor did she sign the form. The nurse practitioner had noted defer to PCP because she did not want to fill out the areas of assistance. The ASW asked the medical providers office to fax the 54A Medical Needs form to the Department as it was given to Petitioner. (Exhibit A, p. 24)
8. The version of the September 23, 2019, DHS-54A Medical Needs form the ASW received directly from the nurse practitioner's office did not have section I completed, was not signed by the nurse practitioner, and did not have an NPI number listed. (Exhibit A, p. 23)
9. On October 21, 2019, a DHS-1212 Negative Action notice was issued to Petitioner stating the HHS case would be terminated effective November 4, 2019, because the DHS-54A Medical Needs form Petitioner submitted could not be used as the medical provider did not fill out sections of this form. It was noted that this is considered fraudulent. (Exhibit A, p. 26)
10. On December 3, 2019, Petitioner's hearing request was received by the Michigan Office of Administrative Hearings and Rules (MOAHR). (Exhibit A, pp. 7-9)

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.

Adult Services Manual (ASM) 015 addresses the DHS-54A Medical Needs form. In part, this policy states:

MEDICAL NEEDS FORM (DHS-54A)

The DHS-54A, Medical Needs, form is required for **all** clients receiving Medicaid personal care services. The DHS-54A must be signed and dated by a medical professional certifying a medical need for personal care services. The medical professional must be an existing enrolled Medicaid provider and hold one of the following professional licenses:

- Physical (M.D. or D.O).
- Nurse practitioner.
- Occupational therapist
- Physical therapist.
- Physician assistant (PA).

The client or their representative is responsible for obtaining the medical certification of need, but the form must be completed by the medical professional and not the client. The National Provider Identifier (NPI) number must be entered on the form by the medical provider and the medical professional must indicate whether they are a Medicaid enrolled provider.

The medical professional certifies that the client's need for service is related to an existing medical condition. **The medical professional does not prescribe or authorize the actual personal care services.** The list of available services on the form is there for medical reference only.

If the medical needs form has not been returned, the adult services worker should follow up with the client and/or medical professional.

Adult Service Manual (ASM) 015
January 1, 2018, pp. 1-2
(Underline added by ALJ)

Adult Services Manual (ASM) 105 addresses the HHS requirements:

Requirements

Home help eligibility requirements include **all** of the following:

- Medicaid eligibility.
- Certification of medical need.
- Need for service, based on a complete comprehensive assessment indicating a functional limitation of level 3 or greater for at least one activity of daily living (ADL).
- Appropriate Program Enrollment Type (PET) codes.

Adult Service Manual (ASM) 105
January 1, 2018, p. 1
(Underline added by ALJ)

In this case, the Department discovered that they did not have a valid certification of medical need on file for Petitioner. On the December 12, 2011, DHS-54A Medical Needs form, the doctor did not check "YES" or "NO" in Section I to certify whether Petitioner has a medical need for assistance with any of the listed personal care activities. (Exhibit A, p. 17)

During the August 29, 2019, 6-month review of Petitioner's HHS case, the ASW gave Petitioner a new DHS-54A Medical Needs form for her medical provider to complete. (Exhibit A, p. 18) By September 20, 2019, the needed medical certification form had not been received. Accordingly, a suspension notice was issued, along with another DHS-54A Medical Needs form, stating that the case would be suspended if a new Medical Needs form was not returned on or before October 4, 2019. (Exhibit A, p. 20)

On October 11, 2019, the Department received a DHS 54A Medical Needs form indicating it was completed by Petitioner's nurse practitioner on September 23, 2019. Section I was marked "YES" to certify that Petitioner has a medical need for assistance with listed personal care activities and multiple activities were circled. However, defer to

PCP was also noted in several sections. The ASW and the nurse practitioner's office both compared the form the Department received from Petitioner with the form as the nurse practitioner had completed it. It was confirmed that the form had been altered. The version of the September 23, 2019, DHS-54A Medical Needs form the ASW received directly from the nurse practitioner's office did not have section I completed, was not signed by the nurse practitioner, and did not have an NPI number listed. The nurse practitioner did not recommend any services and instead noted defer to PCP because she did not want to fill out the areas of assistance. (Exhibit A, pp. 21-25; ASW Testimony) Accordingly, on October 21, 2019, a DHS-1212 Negative Action notice was issued to Petitioner stating the HHS case would be terminated effective November 4, 2019, because the DHS-54A Medical Needs form Petitioner submitted could not be used as the medical provider did not fill out sections of this form. It was noted that this is considered fraudulent. (Exhibit A, p. 26)

Petitioner testified that she did not sign the nurse practitioner's name. Rather, when she took the form back in there, the secretary at the office signed the nurse practitioner's name. However, Petitioner figured that the nurse practitioner left section I for her to fill out as she had never had a medical provider complete the form without being there in the office. The medical providers usually ask Petitioner what she needs help with. Petitioner stated that the nurse practitioner would not have known what Petitioner needs. Accordingly, Petitioner acknowledged that she completed Section I. (Petitioner Testimony)

Petitioner also asserted that there had been another DHS-54A Medical Needs form completed by another doctor for her HHS case after December 12, 2011, and before September 23, 2019. Petitioner testified that this form was for her HHS case and had been submitted to the Department. (Petitioner Testimony)

Based on the information available to the Department at the time of the October 21, 2019, case action, the determination to terminate Petitioner's HHS case was in accordance with Department policy. The previous DHS-54A Medical Needs form found in Petitioner's case record was not valid because the doctor did not check "YES" or "NO" in Section I to certify whether Petitioner has a medical need for assistance with any of the listed personal care activities. (Exhibit A, p. 17) Policy requires a valid certification of a medical need for services by a Medicaid enrolled medical professional. Therefore, the Department properly requested a DHS-54A Medical Needs form during the current 6-month review. The evidence establishes that Petitioner filled out part of the September 23, 2019, DHS-54A Medical Needs form, specifically section I. Accordingly, Petitioner was not eligible for HHS because a valid certification of a medical need for services by a Medicaid enrolled medical professional was not received.

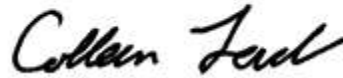
If she has not already done so, Petitioner can re-apply for HHS and provide a new medical certification completed by a Medicaid enrolled medical professional.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly terminated Petitioner's HHS case based on the available information.

IT IS, THEREFORE, ORDERED that:

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



CL/dh

Colleen Lack
Administrative Law Judge
for Robert Gordon, 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 Office of Administrative Hearings and Rules (MOAHR).

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

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

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

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

DHHS -Dept Contact

Michelle Martin
Capitol Commons
6th Floor
Lansing, MI 48909

DHHS

Jessica Kirchmeier
1050 Independence Blvd
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DHHS Department Rep.

M. Carrier
Appeals Section
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Agency Representative

Emily Piggott
222 N Washington Square
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Petitioner

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