



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
MI [REDACTED]

Date Mailed: February 25, 2021
MOAHR Docket No.: 20-007442
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Steven Kibit

DECISION AND ORDER

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

After due notice, a telephone hearing was held on February 9, 2021. [REDACTED], Petitioner's niece and care provider, appeared and testified on Petitioner's behalf. [REDACTED] Petitioner's daughter, also testified as a witness for Petitioner. Petitioner was present for the hearing but did not testify. Florence Scott-Emuakpor, Appeals Review Officer, represented the Respondent Department of Health and Human Services (DHHS or Department). Erica Greer, Adult Services Worker (ASW), testified as a witness for the Department.

During the hearing, Petitioner submitted a letter from her medical provider that was admitted as Exhibit #1, page 1. The Department also submitted an evidence packet that was admitted into the record as Exhibit A, pages 1-24.

ISSUE

Did the Department properly deny Petitioner's requests for Home Help Services (HHS)?

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 [REDACTED] year-old Medicaid beneficiary who has been diagnosed with moyamoya disease; multiple strokes; and neurofibromatosis. (Exhibit A, pages 7-8).
2. On February 13, 2020, Petitioner was referred for HHS through the Department. (Exhibit A, page 8).

3. As part of the application process, Petitioner submitted a Medical Needs form signed by a Medicaid-enrolled provider on February 17, 2020. (Exhibit A, page 7).
4. However, the medical provider failed to check "YES" when asked to certify that Petitioner had a medical need for assistance with any of the personal care activities listed. (Exhibit #1, page 1; Exhibit A, page 7).
5. On March 4, 2020, the Department sent Petitioner written notice that her request for HHS had been denied. (Exhibit A, page 9).
6. With respect to the reason for the denial, the notice stated:

Your submitted Medical Needs form was received, but is not valid for adult home help eligibility. Please see the highlighted area on the returned form. Your physician failed to certify if you have a "medical need for assistance . . ." Please have your physician complete the highlighted area, initial by the change, and mail the original form back with the attached postage-paid envelope. Once the Medical Needs form is received back in-office, another referral for services will be added. Thank you.

Exhibit A, page 9

7. Petitioner did not submit a corrected or updated copy of the original Medical Needs form following the denial. (Testimony of Petitioner's representative; Testimony of ASW).
8. In March of 2020, Petitioner did submit a new Medical Needs form signed by a medical provider and certifying her medical need for assistance with personal care activities. (Testimony of Petitioner's representative; Testimony of ASW).
9. The Department did not take any action in response to the new Medical Needs form. (Testimony of Petitioner's representative; Testimony of ASW).
10. On September 17, 2020, Petitioner was again referred for HHS through the Department. (Exhibit A, page 10).
11. As part of her application, Petitioner submitted a Medical Needs form signed by a medical provider and certifying her medical need for assistance with personal care activities. (Testimony of Petitioner's

representative; Testimony of ASW).

12. The Medical Needs form was submitted prior to the deadline identified in the Introduction Letter sent to Petitioner. (Exhibit A, page 11; Testimony of ASW).
13. However, on November 4, 2020, the Department sent Petitioner written notice that her request for HHS had been denied because a completed Medical Needs form was not received by the deadline. (Exhibit A, page 12).
14. That notice of denial was sent in error as a completed Medical Needs form had been received. (Testimony of ASW).
15. On December 7, 2020, the Michigan Office Administrative Hearings and Rules (MOAHR) received the request for hearing filed in this matter regarding the denials of Petitioner's requests for HHS. (Exhibit A, page 6).
16. After receiving the request for hearing, the ASW reached out to Petitioner and scheduled an appointment. (Testimony of ASW).
17. The Department subsequently approved Petitioner for HHS, with an effective start date of December 21, 2020. (Testimony of ASW).

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 individuals or by private or public agencies.

HHS are governed by the applicable Adult Services Manuals (ASMs) and, with respect to the eligibility criteria for such services, ASM 105 provides in part:

Requirements

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

- Medicaid eligibility.

- Appropriate program enrollment type (PET) code.
- Certification of medical need.
- Need for service, based on a complete comprehensive assessment indicating a functional limitation of level 3 or greater for activities of daily living (ADL).

ASM 105, page 1

Moreover, with respect to the required certification of medical need, ASM 115 further states in part:

DHS-54A, MEDICAL NEEDS FORM

The DHS-54A, Medical Needs form must be signed and dated by a medical professional certifying a medical need for personal care services based on the existing medical condition, physical disability, or cognitive disability of the client. The medical professional must be an enrolled Medicaid provider and hold one of the following professional licenses:

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

The DHS-54A, Medical Needs form is only required for Home Help clients at the initial opening of a case, unless one of the following exists:

- The ASW assesses a decline in the client's health which significantly increases their need for services, and clarification is needed from the medical provider.
- The ASW assesses an improvement in the client's ability for self-care, resulting in a decrease or elimination of services and the client states their care needs have not changed.

- The current DHS-54A has a specified time frame for needed services and that time frame has elapsed.

The client is responsible for obtaining the medical certification of need, but the DHS-54A must be completed by the medical professional and **not** the client. The National Provider Identifier (NPI) number must be entered on the form, 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, physical disability, or cognitive disability. **The medical professional does not prescribe or authorize personal care services.** Needed services are determined by the comprehensive assessment conducted by the adult services worker.

The date that the valid medical provider signs the DHS-54A is the medical certification date entered into MiAIMS.

If the case is closed and reopened within 90 days with no changes in the client's condition, a new DHS-54A is not necessary.

ASM 115, pages 1-2

Here, the Department denied Petitioner's requests for HHS pursuant to the above policies and on the basis that Petitioner could not be approved for HHS because the Department did not receive the required certification of medical need.

In appealing that decision, Petitioner bears the burden of proving by a preponderance of the evidence that the Department erred in denying her requests for HHS. Moreover, the undersigned Administrative Law Judge is limited to reviewing the Department's decision in light of the information that was available at the time the decision was made.

Given the available information and applicable policies, it is clear that the denial of Petitioner's first request for HHS was proper as the medical provider failed to certify a medical need for assistance with personal care activities as required. Even if the failure to do so was an inadvertent error, as the provider later wrote in a letter, the Department could only base its decision on the Medical Needs form it received and that first form failed to establish that Petitioner met the criteria for HHS.

Nevertheless, it is also clear that the Department erred in its actions following that first denial. For example, the Department failed to act in response to the new Medical Needs form submitted in March of 2020. While the first denial stated that it would enter a new referral if Petitioner submitted a corrected copy of the old Medical Needs form, nothing in policy required Petitioner to do so in order to have a new referral and

Petitioner submitted a new Medical Needs form that should have led to a new referral and either an approval or denial. Moreover, given the lack of adequate notice with respect to that request, Petitioner's request for hearing regarding the Department's failure to process in March of 2020 is not untimely.

Similarly, it is clear that the Department erred when issuing its second denial. While the Department provided in that denial that another request by Petitioner for HHS had been denied because a completed Medical Needs form was not received by the deadline, it is undisputed that Petitioner had in fact timely submitted a Medical Needs form signed by a medical provider and certifying her medical need for assistance with personal care activities. The ASW also expressly testified that the second notice was sent in error.

Additionally, while Petitioner was subsequently approved for HHS, the Department's errors may not have been harmless as the they could affect the effective start date of Petitioner's HHS.

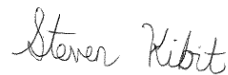
Accordingly, given its errors, the Department's actions following the first denial must be reversed and it must initiate a reassessment of the start date for Petitioner's HHS and approved HHS Petitioner is otherwise entitled to.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that, while the initial denial was proper, the Department erred in processing or denying Petitioner's requests for HHS thereafter.

IT IS, THEREFORE, ORDERED that:

The Department's actions are **REVERSED**, and it must initiate a reassessment of Petitioner's requests for HHS.



SK/sb

Steven Kibit
Administrative Law Judge
for Elizabeth Hertel, 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
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Authorized Hearing Rep.

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Agency Representative

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DHHS-Location Contact

Hearings Coordinator (Oakland)
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Petitioner

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