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GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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[REDACTED] MI [REDACTED]

Date Mailed: July 1, 2020
MOAHR Docket No.: 20-000001
Agency No.: [REDACTED]
Petitioner: [REDACTED]

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 March 19, 2020. [REDACTED], Daughter and Authorized Hearing Representative represented the Petitioner. [REDACTED], the Petitioner, appeared and testified. Allison Pool, Appeals Review Officer, represented the Department of Health and Human Services (Department). Shamicia Montgomery, Temporary Adult Services Worker (ASW), and Dena Gordon, 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. 1-24.

As a preliminary matter, jurisdiction was addressed. The Department's request for a dismissal asserting that the hearing request was untimely and that there is no appealable issue is denied. No HHS payments were issued for Petitioner's HHS case for dates of service between August 1, 2018 and February 13, 2019. (Exhibit A, pp. 19) There was no evidence of any written notice of case action being issued when the HHS payments stopped for this timeframe. Accordingly, the hearing request cannot be considered untimely as there is no written notice of case action to start a 90-day timeframe to file an appeal. Further, Adult Services Manual (ASM) 170 lists three types of negative actions, including "suspended- payments stopped but case remains open." ASM 170, January 1, 2017, p. 2. In this matter, the Department effectively suspended Petitioner's HHS payments during the time period at issue because the HHS case remained open, but no payments were issued. Pursuant to ASM 170, when HHS is suspended for any reason written notice must be sent to the client advising of the negative action and explaining the reason for the action. Further, clients have the option to request an administrative hearing on all negative actions. ASM 170, January 1, 2017, p. 2. A suspension of HHS payments is a hearable issue. According, there is

jurisdiction to review the suspension action and the hearing request cannot be considered untimely because no written notice was issued.

Additionally, it is noted that there was a denial of a January 31, 2020, policy exception request for Petitioner's HHS case regarding the HHS payments for the time period at issue. (Exhibit A, pp. 20-21) However, this ALJ does not have any authority to make exceptions to Department policy. Accordingly, this ALJ cannot review a policy exception request determination.

ISSUE

Did the Department properly suspend Home Help Services (HHS) payments for Petitioner's case between August 1, 2018, and February 13, 2019?

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 has had an open HHS case since September 1, 1997. (Exhibit A, p. 8)
2. On August 3, 2018, a home visit was completed with Petitioner and her HHS caregiver, [REDACTED]. Petitioner's husband and son were also present and translated. It was noted that HHS payments were active, and the caregiver completes paper service verification logs. (Exhibit A, p. 10)
3. On October 24, 2018, Petitioner's daughter emailed the Department noting that Petitioner now resides with her. Petitioner's daughter described her many attempts to call the Department for several months, including leaving multiple messages, regarding Petitioner's case, health status, need for a change in caregiver, and to request another home visit. It was noted that they understood that they must report and communicate changes to the ASW and had not submitted the monthly service verification for several months. They were concerned that the current caregiver would quit if the matter is not resolved. (Exhibit A, p. 10)
4. On October 24, 2018, an ASW called Petitioner's daughter and advised that if there has been a change in caregiver, they must register in the Department's CHAMPS computer system. There was some discussion regarding Petitioner's Medicaid changing to an Integrated Care Organization (ICO) or if the MI Choice Waiver program services would assist Petitioner more than the HHS program. The ASW went over Petitioner's needs in the home and indicated nothing had changed to increase the services through the HHS program. The ASW was going to schedule an early appointment to see Petitioner in the new home. (Exhibit A, p. 11)

5. On November 29, 2018, a home visit was completed with Petitioner and her grandson/caregiver [REDACTED] in the home. Petitioner's daughter was also present. Petitioner's needs were reviewed and it was noted that no changes in the HHS time and task authorization were needed at that time. It was also noted that Petitioner's daughter and grandson tried to register as the HHS provider, were still having issues with CHAMPS, and had contacted the provider support hotline. (Exhibit A, p. 12)
6. No HHS payments were issued for dates of service between August 1, 2018, and February 14, 2019. (Exhibit A, p. 19)
7. Petitioner's three most recent enrolled HHS providers have been: [REDACTED] from June 1, 2015 through August 31, 2018; [REDACTED] from February 14, 2019, through October 31, 2019; and [REDACTED] since November 1, 2019. (Exhibit A, p. 18)
8. On January 2, 2020, Petitioner's hearing request was received by the Michigan Office of Administrative Hearings and Rules. (Exhibit A, pp. 6-7)

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) 135 addresses HHS caregivers:

CAREGIVER SELECTION

The client has the right to choose his or her home help caregiver(s). The client is the employer and may terminate the caregiver's employment at any time. Home help services are a benefit to the client and earnings for the caregiver.

CAREGIVER CRITERIA

The determination of caregiver criteria is the responsibility of the adult services worker (ASW). Determine the provider's

ability to meet the following **minimum** criteria during a face-to-face interview with the client **and** the caregiver:

Age

The caregiver must be 18 years and older.

Ability

- To follow instructions and home help program procedures.
- To perform the services required.
- To handle emergencies.

Physical Health

The caregiver's health must be adequate to perform the needed services.

Knowledge

The caregiver must know when to seek assistance from appropriate sources in the event of an emergency.

Personal Qualities

The caregiver must be dependable and able to meet job demands.

Criminal History Screen

All individual home help caregivers must undergo a criminal history screen prior to providing home help services.

Note: Criminal history screens for home help caregivers are conducted by the MDHHS provider enrollment unit and **not** by staff at the local office. Adult services staff **must only** utilize LEIN information in the course of an APS investigation. Use of LEIN in any other adult services program is **prohibited**.

Training

The caregiver must be willing to participate in available training programs if necessary.

Note: Home help payment may be terminated if the caregiver fails to meet any of the caregiver criteria.

CAREGIVER INTERVIEW

An initial face-to-face interview must be completed with the home help caregiver. A face-to-face or phone contact must be made with the caregiver at the six month review to verify services are being furnished. If phone contact was made at the last review, a face-to-face contact with the caregiver is mandatory for the next review. The ASW must document the contact in MiAIMS by selecting face to face-client and provider or face to face-provider under the *contact* tab.

The caregiver must present a picture identification (ID) card that includes his/her name for verification. Picture ID may include driver's license/state ID, passport or employee ID. Expired IDs are acceptable as long as identity can be verified by the adult services worker.

Explain the following points to the client and the caregiver during the initial interview:

- Home help services are a benefit to the client and earnings to the caregiver.
- The caregiver is employed by the client **not** the State of Michigan.
- As the employer, the client has the right to hire and fire the caregiver.
- The caregiver must be enrolled in the Community Health Automated Medicaid Processing System (CHAMPS) and undergo a criminal history screen. The screening must be completed and passed before a provider can be paid to provide Home Help services.
- The caregiver must keep their contact information up-to-date in CHAMPS; see provider change of address *in this item*.
- The home help program is funded by Medicaid and payments will not be authorized by the department if the client's Medicaid eligibility is inactive.

- A caregiver who receives public assistance **must** report all income received as a home help caregiver to their family independence specialist (FIS) or eligibility specialist (ES).
- The caregiver cannot be paid if the client is unavailable; including but not limited to hospitalizations, nursing home or adult foster care (AFC) admissions.

Note: Home help services cannot be paid the day a client is admitted into or day of discharge from the hospital, nursing home, or AFC home.

- The client and/or caregiver is responsible for notifying the ASW within **10 business days** of any change; including but not limited to hospitalizations, nursing home or adult foster care admissions.
- The client and/or caregiver is responsible for notifying the ASW within **10 business days** of a change in caregiver or discontinuation of services. Payments must **only** be authorized to the individual/agency providing approved services.
 - Home help warrants can **only** be endorsed by the individual(s) listed on the warrant.
 - Home help warrants are issued only for the individual/agency named on the warrant as the authorized caregiver.
 - If the individual named on the warrant does not provide services or provides services for only a portion of the authorized period, the warrant must be returned.

Note: Failure to comply with any of the above **may** be considered fraudulent or require recoupment.

- Any payment received for home help services **not** provided must be returned to the State of Michigan.
- Accepting payment for services not rendered is fraudulent and could result in criminal charges.

- The caregiver must submit an electronic services verification (ESV) monthly to confirm home help services were provided.

Exception: Individuals who are unable to submit a service verification electronically must submit a paper service verification (PSV) form monthly.

- Home help warrants are issued as dual party and mailed to the client's address.

Exception: There are circumstances where payment to the caregiver only is appropriate, for example, client is physically or mentally unable to endorse the warrant. Authorizations to home help agency providers are payable to the provider only.

- **All** earned income must be reported to the IRS; see www.irs.gov.
- No federal, state, or city income taxes are withheld from the warrant.
- Social security and Medicare tax (FICA) **are** withheld from individual caregiver home help warrants.
- Parents who are caring for an adult child do **not** have FICA withheld.

Note: Parents who wish to have FICA withheld must be assigned in MiAIMS as other relative in the *provider assignment* screen.

- **All** individual caregivers will receive a W-2.
- Agency providers will receive a 1099.
- The client **and** caregiver/agency provider **must** sign the MSA-4676, Home help Services Statement of Employment, **before** payments are authorized.

CAREGIVER ENROLLMENT

All Caregivers of Home Help must enroll in the Community Health Automated Medicaid Processing System (CHAMPS) and be approved prior to authorizing payment. During the enrollment process, individuals will be screened for criminal

history. Once a caregiver is approved, CHAMPS will assign the caregiver a seven-digit identification number. The ASW must allow 24 hours from the completion of enrollment in CHAMPS to interface with MiAIMS.

Terms and Conditions

Home help caregivers are required to agree to a list of terms and conditions during the electronic enrollment process. The terms and conditions **replace** the requirement for the caregiver to complete and sign the MSA-4678, Medical Assistance Home Help Provider Agreement.

Exception: Caregivers who are unable to enroll in CHAMPS electronically must complete and sign the MSA-4678.

Manual Enrollment

Individuals who are unable to enroll into CHAMPS electronically must be assisted by the adult services worker (ASW). The ASW will assist in the enrollment process by doing the following:

- Completes the DHS-2351X, Provider Enrollment/Change Request.
- Have the caregiver complete and sign the MSA-4678, Medical Assistance Home help Provider Agreement.
- Forwards the DHS-2351X and MSA-4678 to the MDHHS provider enrollment unit via ID mail to:

MDHHS Provider Enrollment Unit
P. O. Box 30437
Lansing, Michigan 48909

OR

Scan and email to MSA-
HomeHelpProviders@michigan.gov

OR

Fax to 517-373-2382

The provider enrollment unit will notify the adult services worker via email once the caregiver is enrolled in CHAMPS.

Adult Services Manual (ASM) 140 addresses payment authorizations:

Payment Authorizations

No payment can be authorized unless the individual caregiver has been enrolled and screened for criminal history in the Community Health Automated Medicaid Processing System (CHAMPS).

Agency caregivers must also be enrolled in CHAMPS. In addition to enrolling in CHAMPS, a home help agency provider must be registered as a vendor with the State of Michigan by registering and updating their information online using the Statewide Integrated Governmental Management Applications (SIGMA) system at www.michigan.gov/SIGMAVSS.

If an agency provider is not registered with the State of Michigan, payments will not process.

Note: The adult services home page provides a link to the caregiver enrollment instructions located on Michigan.gov/homehelp. For additional questions regarding caregiver enrollment in CHAMPS, refer caregivers to Provider Support at 800-979-4662.

Home help services payments to individual caregivers/agency providers must be:

- Authorized for a specific period of time and payment amount. The task is determined by the comprehensive assessment in MiAIMS and will automatically include tasks that are ranked a level three or higher.

Note: The adult services worker can authorize an ongoing home help payment for up to six months, not to exceed the next review.

- Authorized **only** to the person or agency actually providing the hands-on services.

Adult Services Manual (ASM) 140,
April 1, 2018, pp. 1-2
(Underline added by ALJ)

In this case, it appears that the HHS payments stopped effective August 1, 2018, because no service verification logs were submitted. A home visit was completed on August 3, 2018, with Petitioner and the enrolled caregiver at that time, Asma Al-Chemali. The ASW indicated HHS payments would continue, payments were active, and the caregiver had been submitting paper service verification logs. (Exhibit A, p. 10) Sometime after this home visit in August 2018, Petitioner moved to her Daughter's home after falling at her son's home. Petitioner's daughter described her many attempts over several months to reach the Department by phone to report the changes with Petitioner's address, health status, and change of caregiver. Petitioner's daughter also sent an email to the Department on October 24, 2018. (Exhibit A, pp. 6-7 and 10; Daughter Testimony) In part, the email acknowledged that they had not submitted the monthly service verification logs for several months. (Exhibit A, p. 10) This is understandable because the enrolled HHS caregiver was no longer providing services for Petitioner. Therefore, there was no enrolled HHS caregiver for Petitioner that could complete service verification logs. However, the Department would not have continued to issue HHS payments when the required monthly service verification logs were not submitted.

It is unclear why no notice of a suspension of HHS payments was issued at any point between August 1, 2018, and February 13, 2019. For example, no notice of a suspension or any other case action was sent when the required logs were not submitted for several months or when the Department was aware that there had been a change in caregiver and the CHAMPS enrollment process had yet to be completed to enroll the new caregiver(s).

Further, it appears that the Department was not responsive to Petitioner's daughter's attempts to timely notify the Department of the changes with Petitioner's address and caregiver. The August 3, 2018, home visit narrative note indicates Petitioner is very hard of hearing and her husband/son translated during that visit. (Exhibit A, p. 10) Accordingly, it is understandable the Petitioner had her daughter attempt to contact the ASW. As noted above, Petitioner's daughter detailed her many attempts over several months to reach the Department by phone. The Department was aware of the change in caregiver at least as of the October 24, 2018, email from Petitioner's daughter, and the telephone contact with her that same day. (Exhibit A, pp. 6-7 and 10-11; Daughter Testimony) However, a home visit to meet with Petitioner and her new caregiver(s), was not completed until November 29, 2018. (Exhibit A, pp. 11-12) The ASW's notes indicate she was aware of the difficulties Petitioner's daughter and grandson were still having with the CHAMPS enrollment process. (Exhibit A, p. 12) Yet it does not appear that that ASW assisted them with the manual enrollment process described in ASM 135. Petitioner's daughter testified that the ASW was going to send them paperwork, but they never received it. (Daughter Testimony)

However, the above cited ASM policies are clear that no HHS payment can be issued until the caregiver has completed the CHAMPS enrollment process. Petitioner's daughter indicated there were three caregivers providing services for Petitioner between August 1, 2018, and February 13, 2019: Petitioner's daughter; Petitioner's grandson;

and a woman that Petitioner's daughter paid out of pocket. (Daughter Testimony) There was no evidence that the woman Petitioner's daughter paid out of pocket ever completed the CHAMPS enrollment process. Accordingly, no HHS payment could be issued for any services she provided. It was also uncontested that the CHAMPS enrollment process for Petitioner's daughter and grandson was completed in February 2019. Accordingly, no HHS payment could be issued for any services they provided prior to the date they completed the CHAMPS enrollment process in February 2019.

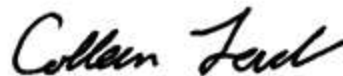
Overall, the evidence indicates the Department improperly suspended HHS payments for Petitioner's HHS case between August 1, 2018, and February 13, 2019, because no notice of the case action was issued. There was also evidence that the ASW assigned to Petitioner's case at that time was not reachable or responsive to messages about the Petitioner's changes in address and caregiver. Further, the evidence indicates that the ASW at that time did not provide the assistance described in ASM 135 with a manual enrollment when Petitioner's caregivers were having difficulties enrolling in CHAMPS electronically. However, there is no remedy that can be ordered in this case as the ASM policies are also clear that no HHS payments can be issued for services provided before the caregiver(s) completed the CHAMPS enrollment process. The evidence indicates that all three caregivers providing services to Petitioner had not completed the CHAMPS enrollment process during the time period at issue. This Administrative Law Judge has no authority to change or make exception to Department policies.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department improperly suspended HHS payments for Petitioner's HHS case between August 1, 2018, and February 13, 2019.

IT IS, THEREFORE, ORDERED that:

The Department's decision is **REVERSED**. However, as discussed above, there is no remedy that can be ordered in this case because HHS payments cannot be issued for services a caregiver provided prior to completing the CHAMPS enrollment process.



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
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DHHS Department Rep.

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