

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: March 13, 2020
MOAHR Docket No.: 20-000095
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 Petitioner's request for a hearing.

After due notice, a telephone hearing was held on February 25, 2020. Petitioner appeared and testified on her own behalf. Allison Pool, Appeals Review Officer, represented the Respondent Michigan Department of Health and Human Services (MDHHS or Department). Fonda Jones, Adult Services Worker (ASW), testified as a witness for the Department.

During the hearing, the Department submitted one exhibit/evidence packet that was admitted into the record as Exhibit A, pages 1-46. Petitioner did not submit any exhibits.

ISSUE

Did the Department properly determine the start date for Petitioner's 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. On April 12, 2019, Petitioner was referred for HHS through the Department. (Exhibit A, page 7).
2. At that time, Petitioner had active Medicaid coverage. (Exhibit A, page 7).
3. On May 22, 2019, the ASW conducted a comprehensive assessment with Petitioner in Petitioner's home. (Exhibit A, page 7).
4. During her review of Petitioner's application, the ASW determined that

Petitioner would have a Medicaid deductible/spend-down as of June 1, 2019. (Exhibit A, page 7).

5. On May 22, 2019, the Department sent Petitioner written notice that her request for HHS was denied because she would no longer have active Medicaid as of June 1, 2019. (Exhibit A, page 8).
6. By June 5, 2019 at the latest, the Department removed Petitioner's Medicaid deductible/spend-down. (Exhibit A, page 8).
7. On July 7, 2019, Petitioner reapplied for HHS. (Exhibit A, page 8).
8. On August 1, 2019, the Department sent Petitioner written notice that her request for HHS was denied because required forms had not been received. (Exhibit A, page 8).
9. On August 19, 2019, the Michigan Office of Administrative Hearings and Rules (MOAHR) received a request for hearing filed with respect to the denials of Petitioner's request for HHS. (Exhibit A, page 8).
10. MOAHR docketed Petitioner's request as Docket No. 19-008662 and assigned the case to the undersigned Administrative Law Judge. (Exhibit A, page 7).
11. On September 19, 2019, an administrative hearing was held in Docket No. 19-008662. (Exhibit A, page 7).
12. On October 7, 2019, the undersigned Administrative Law Judge issued a Decision and Order reversing the Department. (Exhibit A, pages 16-20).
13. In part, the undersigned Administrative Law Judge wrote:

Here, pursuant to the above policy, the Department decided to deny Petitioner's initial request HHS on the basis that her Medicaid scope of coverage was changing on June 1, 2019, and she would have a Medicaid deductible obligation as of that date.

However, Petitioner did not have a Medicaid deductible on the date of the denial and, instead, the Department denied Petitioner's request on the basis that her Medicaid was inactive at a time when Petitioner's Medicaid was active. Moreover, while information at the time indicated that Petitioner would soon have a Medicaid deductible obligation, that alone does not warrant a denial as beneficiaries with

a deductible can receive HHS after the deductible is met. The ASW assumed that Petitioner would not be able to meet any deductible and would therefore not be able to receive HHS. However, such an assumption is improper and an insufficient basis for denying Petitioner's request. That assumption also turned out to be incorrect in this case as Petitioner's deductible had been placed in error and was soon removed.

Petitioner has the burden of proving by a preponderance of the evidence that the Department erred in deciding to deny her request for HHS. Given the available information and applicable policies in this case, Petitioner has met that burden of proof with respect to the initial denial and the Department's decision must therefore be reversed.

Exhibit A, pages 19-20

14. The undersigned Administrative Law Judge also noted that, as the initial denial was clearly improper, he was not reviewing the second denial. (Exhibit A, page 20).
15. The undersigned Administrative Law Judge specifically ordered that: "The Department's decision is **REVERSED** and it must initiate a reassessment of Petitioner's request for HHS." (Exhibit A, page 20).
16. On October 14, 2019, the Department entered in a new referral for Petitioner. (Exhibit A, page 14).
17. The ASW has no explanation for why she entered a new referral rather than reopening the earlier case for which the undersigned Administrative Law Judge had reversed the Department's denial and ordered a reassessment. (Testimony of ASW).
18. On October 25, 2019, the ASW completed a comprehensive assessment with Petitioner in Petitioner's home. (Exhibit A, pages 12-13).
19. On some later date, the ASW also met with Petitioner's care provider. (Testimony of ASW).
20. On October 28, 2019, the Department sent Petitioner written notice that she had been approved for HHS, with an effective start date of October

14, 2019. (Exhibit A, page 8).

21. Petitioner was also advised to have her provider enroll in the Department's Community Health Automated Medicaid Processing System (CHAMPS). (Exhibit A, page 8).
22. On November 6, 2019, the Department sent Petitioner another notice stating that she had been approved for HHS as of October 14, 2019 and that her provider needed to enroll in CHAMPS. (Exhibit A, page 9).
23. The second notice also stated that, once Petitioner's provider was enrolled and approved as a provider, the ASW will send a second letter stating that approved time and task for care. (Exhibit A, page 9).
24. Subsequently, Petitioner's provider was approved for \$292.57 per month in payments for providing HHS for Petitioner, with a "Begin Date" of October 14, 2020. (Exhibit A, page 15).
25. On January 4, 2020, the Michigan Office Administrative Hearings and Rules (MOAHR) received the request for hearing filed by Petitioner in this matter. (Exhibit A, page 6).
26. In that request, Petitioner asserts that the approval of HHS was made effective as of October 14, 2019 when it should have been made effective as of May 22, 2019. (Exhibit A, page 6).

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.

Applicable policies regarding HHS can be located in various parts of the Adult Services Manual (ASM) and the Bridges Administrative Manual (BAM). For example, with respect to referrals for HHS, ASM 110 states in part:

REFERRAL INTAKE

A referral for Home Help services may be received by phone, mail, fax, or in person and must be entered on Michigan Adult Integrated Management System (MiAIMS) upon receipt. The referral source does not have to be the individual in need of the services.

* * *

Registration and Case Disposition Action

Supervisor or designee assigns case to the adult services worker (ASW) in the Assign Worker button under Client Action section on MiAIMS.

Documentation

Print introduction letter, the DHS-390, Adult Services Application, and the DHS-54A, Medical Needs, form located in the Forms tab and mail to the client. The introduction letter allows the client 21 calendars days to return the documentation to the local office.

Note: The introduction letter does not serve as adequate notification if home help services are denied. The ASW must send the client a DHS-1212A, Adequate Negative Action Notice; see ASM 150, Notification of Eligibility Determination.

Standard of Promptness (SOP)

The ASW must determine eligibility within the 45 day standard of promptness which begins from the time the referral is received and entered on MiAIMS. The referral date entered on MiAIMS must be the date the referral was received into the local office. The computer system calculates the 45 days beginning the day after the referral date and counting 45 calendar days. If the due date falls on a weekend or holiday, the due date is the next business day.

When a signed DHS-390 serves as the initial request for services, the referral date must be the date the application was received in the local office.

Note: A medical need form does not serve as an application for services. If the local office receives the DHS-54A, a referral must be entered on MiAIMS for the date the form was received in the local office and an application sent to the individual requesting services.

After receiving the assigned case, the ASW gathers information through an assessment, contacts, etc. to make a determination to open, deny or withdraw the referral; see ASM 115, Adult Services Requirements.

ASM 110, pages 1-2

Moreover, regarding eligibility for HHS, ASM 105 states in part:

GENERAL

Home help services are available if the client meets all eligibility requirements. An independent living services case may be opened for supportive services to assist the client in applying for Medicaid (MA).

Home help services payments cannot be authorized prior to establishing Medicaid eligibility and completing a face-to-face assessment with the client. Once MA eligibility has been established, the case service methodology must be changed to case management.

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.

ASM 105, page 1

With respect to decisions on applications for HHS, ASM 150 states in part:

Written Notification of Disposition

All notifications are documented under Michigan Adult Integrated Management System (MiAIMS) contact module, when they are generated. This documentation acts as the file copy for the case record. For this purpose, the form letters used are:

- DHS-1210, Services Approval Notice.
- DHS-1212A, Adequate Negative Action Notice.
- DHS-1212, Advance Negative Action Notice.

Each notification letter must include an explanation of the procedures for requesting an administrative hearing. The DCH-0092, Request for Hearings, notification must be generated from the forms module in MiAIMS and sent with all negative action notices (DHS- 1212A or DHS 1212).

The adult services worker **must sign** the bottom of the second page of all notices (DHS-1210, DHS-1212A, DHS-1212) before they are mailed to the client.

* * *

Adequate Negative Action Notice (DHS-1212A)

The DHS-1212A, Adequate Negative Action Notice, is used and generated on MiAIMS when Home Help services and Adult Community Placement services cases have been denied. Appropriate notations must be entered in the comment section explaining the reason for the denial.

Adequate Negative Action Notices **do not** require a 10-business day notice to the client. The DCH-0092, Request for Hearing, form must be generated from MiAIMS and sent to the client with the DHS-1212A.

ASM 150, pages 1-2

To the extent an eligibility determination results in a denial, an applicant can request an administrative hearing with respect to that denial:

Administrative Hearing Requests

Clients have the option to request an administrative hearing on all negative actions.

If the client requests a hearing before the effective date of the negative action, continue payments until a hearing decision has been made. If the ASW is made aware of the hearing request after payments have ended, payments must be reinstated pending the outcome of the hearing. Offer the client the option of suspending payments until after the hearing decision.

Note: When payments are continued pending the outcome of a hearing, the client must repay any overpayments if the Department's negative action is upheld. Initiate recoupment procedures by sending the client a DHS-566, Recoupment, Letter.

ASM 170, page 2

Moreover, regarding administrative hearings and implementing decisions made following such hearings, BAM 600 states in part:

Clients have the right to contest a Michigan Department of Health and Human Services (MDHHS) decision affecting eligibility or benefit levels whenever they believe the decision is incorrect. MDHHS provides an administrative hearing to review the decision and determine its appropriateness in accordance to policy. This item includes procedures to meet the minimum requirements for a fair hearing.

Efforts to clarify and resolve the client's concerns must start when the hearing request is received and continue through the day of the hearing.

* * *

The ALJ determines the facts based only on evidence introduced at the hearing, draws a conclusion of law, and determines whether MDHHS policy was appropriately applied.

* * *

Implementing the Hearing Decision

All Programs

All hearing decisions **must** be recorded in Bridges, on the Hearing Restore Benefits screen.

Some hearing decisions require implementation by the local office. Implement a decision and order within 10 calendar days of the mailing date on the hearing decision. **Do not provide a notice of case action. The hearing decision serves as notice of the action.** If implementation requires a redetermination, send a notice of case action on the redetermination action.

Implement the hearing decision pending a court appeal unless a circuit court or other court with jurisdiction issues an order requiring a stay.

BAM 600 1, 39, 42-43

As discussed above, Petitioner applied for HHS, with a referral date of April 12, 2019; her application was denied; she appealed that denial; and the undersigned Administrative Law Judge issued a Decision and Order reversing that denial and ordering the Department to initiate a reassessment of Petitioner's request.

In response, the Department entered in a new referral for Petitioner; completed an assessment; and approved Petitioner for HHS, with the case opened and payments approved effective October 14, 2019.

Petitioner then requested a hearing with respect to the Department's decision regarding the start date of her HHS and payments.

In requesting a hearing, Petitioner bears the burden of proving by a preponderance of the evidence that the Department erred.

Given the record and applicable policies in this case, Petitioner has met that burden of proof and the Department's decision must be reversed.

As an initial matter, the Department erred by entering a new referral for Petitioner following the undersigned Administrative Law Judge's earlier Decision and Order. The undersigned Administrative Law Judge ordered the Department to initiate a reassessment of Petitioner's request, *i.e.* the earlier request that had been improperly denied, and Petitioner was not a new case or application. The ASW also could not

explain why she entered a new referral for Petitioner, and the undersigned Administrative Law Judge finds no basis for doing so in policy.

Moreover, that error in entering a new referral was not harmless and it therefore necessitates another reversal and reassessment in this case. The Department could not explain the reasoning behind the effective date for the approval and payments for HHS, but it notably identified the open date of Petitioner's HHS case and the start date of payments for HHS as the same date of the new referral, which suggests that the inaccurate referral date was dispositive in this case. Additionally, while the Department did properly note that certain requirements must be met before an eligibility determination can be made and payments authorized, including an in-home comprehensive assessment and a meeting with the provider, it erred in suggesting that a delay in meeting those requirements played a role in this case. Specifically, the Department relies upon an assessment completed on October 25, 2019 and a meeting with the provider on some unidentified date that the ASW could not recall, but both of those events undisputedly occurred after October 14, 2019, the effective date of services and payments, and therefore could not be the basis for the Department's action in this case.

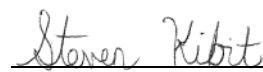
The open date for HHS and the start date of payments need not necessarily be the same date under the above policies, and the record in this case is unclear as to what those two dates should be for Petitioner. However, what is clear, is that the Department erred in entering a new referral for Petitioner's following the previous administrative hearing and making that referral date the effective date for services and payments. Accordingly, the Department's actions must be reversed.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department erred in determining the start date for Petitioner's HHS.

IT IS, THEREFORE, ORDERED that the Department's actions are **REVERSED** and it must initiate (1) a reopening of Petitioner's April 12, 2019 application for HHS; (2) a redetermination of Petitioner's request for services as of April 12, 2019, ongoing; and (3) payment for services that Petitioner is otherwise entitled to.

SK/sb



Steven Kibit
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

Kimberly Kornoelje
121 Franklin SE
Grand Rapids, MI
49507

DHHS Department Rep.

M. Carrier
Appeals Section
PO Box 30807
Lansing, MI
48933

Agency Representative

Allison Pool
222 N Washington Square
Suite 100
Lansing , MI
48933

Petitioner

[REDACTED]
[REDACTED]
[REDACTED], MI