

GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: March 19, 2021
MOAHR Docket No.: 20-002175
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 upon the Petitioner's request for a hearing.

After due notice, a hearing via video conferencing was held on March 2, 2021. For purposes of hearing, the matter was consolidated with another matter involving Petitioner and a related issue: 20-000324 ICDE.

Attorney Elisa Gomez represented Petitioner during the hearing. Petitioner and Kate Beveridge, MI Health Link Ombudsman, testified as witnesses for Petitioner. [REDACTED] [REDACTED], Petitioner's home care provider, was also present for Petitioner, but did not testify as a witness.

Appeals Review Officer (ARO) Allison Pool represented the Michigan Department of Health and Human Services (MDHHS or Department) in this matter. Brigeda Nelson, Adult Services Worker (ASW), and Allison Repp, Section Manager for the MI Health Link Program, testified as witnesses for the Department. Margo Peterson, Adult Services Supervisor, and Mark Cooley, Contract Manager, were also present for the Department, but did not testify as witnesses.

Attorney Erin Roumayah represented HAP Empowered, the Respondent Integrated Care Organization (ICO) in Docket 20-000324 ICDE. Rhoda Mullins, Manager of Government Membership and Billing Team, and TreKinya Matthews, Manager of Government Programs, testified as witnesses for the ICO. Taysha Morales, Project Coordinator, was also present for the ICO, but did not testify as a witness.

During the consolidated hearing, the following exhibits were entered into the record:

Petitioner's Exhibits:

1. July 3, 2019 Email from [REDACTED] to [REDACTED]
2. July 10, 2019 Email from [REDACTED] to [REDACTED]
3. October 8, 2019 Email from [REDACTED] to MDHHS MHL SR ASSISTANCE
4. October 8-9, 2019 Emails between Dan Wojciak and Mark Cooley
5. October 28-30, 2019 Emails between [REDACTED] and [REDACTED]
6. November 18, 2019 Services Approval Notice
7. December 3, 2019 Email from [REDACTED]
8. December 4, 2019 Email from MI Health Link Enrollment Team to [REDACTED]
9. December 5, 2019 Letter from Ms. [REDACTED] to Ms. [REDACTED] with Attached Care Logs

Department's Exhibits:

1. Hearing Packet dated February 27, 2020
4. Program Enrollment in State & CMS Systems, eligibility information in CHAMPS and service requests received by MI Health Link team.
5. Service requests received by MI Enrolls and the Enrollment Services Section¹

ICO's Exhibits:

- A. Screenshot of HAP Enrollment System with 02/26/2019 State 834 Data File transaction log
- B. Screenshot of HAP Enrollment System with 02/26/2019 State 834 Data File details
- C. Screenshot of HAP Enrollment System CMS DTRR transaction log with 04/02/2019 Transaction Reason Code 013

¹ The Department's proposed exhibits #2 and #3 were not admitted.

- D. Screenshot of HAP Enrollment System CMS DTRR 04/02/2019 Transaction Reason Code 13 details
- E. Screenshot of HAP IT CMS DTRR Subreason Code details
- F. CMS MAPD Plan Communications User Guide Appendixes Excerpt, Version 12.0, dated February 28, 2018, disenrollment reason codes
- G. April 3, 2019 HAP Empowered Letter to Petitioner
- H. MDHHS Model Notice for Disenrollment due to Loss of Medicaid Status or Other State-Specific Eligibility Status - Notification of Involuntary Disenrollment ("Exhibit 21")
- I. MDHHS Model Notice to Confirm Voluntary Disenrollment Following Receipt of Transaction Reply Report (TRR) ("Exhibit 16")
- J. CHAMPS Member Enrollment Data – Screenshot March 1, 2019 – May 31, 2019
- K. CHAMPS Member Enrollment Data – Screenshot June 1, 2019 – August 31, 2019
- L. CHAMPS Member Enrollment Data – Screenshot September 1, 2019 – November 30, 2019
- M. Screenshot of HAP Pega System with July 2, 2019 Customer Service call log details

ISSUE

Did the Department properly determine the start date of payments for Petitioner's Home Help Services and decline to make payments for personal care services provided to Petitioner during the time period of April 1, 2019 through November 17, 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. As of February 1, 2019, Petitioner was enrolled in the MI Health Link Program and authorized for personal care services through HAP Empowered, an Integrated Care Organization (ICO). (ICO's Exhibit J; Department's Exhibit #1, page 21; Testimony of Manager of Government Membership and Billing Team).

2. On or about February 25, 2019, the Department sent Petitioner written notice regarding her Medicaid eligibility. (Petitioner's Exhibit #2, page 9; Testimony of Petitioner).
3. In that notice, the Department provided that, as of April 1, 2019, Petitioner was not eligible for full Medicaid, but was eligible for the Medicare Savings Program. (Petitioner's Exhibit #2, pages 9-10).
4. Petitioner did not file a request for hearing or take any other action with respect to that notice. (Testimony of Petitioner).
5. On April 1, 2019, Petitioner's Medicaid scope of coverage changed and, as of that date, she no longer had full Medicaid coverage. (Department's Exhibit #1, pages 19-20; Testimony of Section Manager for the MI Health Link Program).
6. Effective April 1, 2019, Petitioner's enrollment and services through the MI Health Link Program were also terminated after it was determined that Petitioner had lost full Medicaid coverage. (ICO's Exhibit J; Department's Exhibit #1, page 21; Testimony of Manager of Government Membership and Billing Team).
7. Following the termination of her services, Petitioner and the MI Health Link Ombudsman worked on getting issues with Petitioner's Medicaid coverage resolved. (Petitioner's Exhibit #1; Petitioner's Exhibit #2; Petitioner's Exhibit #5; Testimony of MI Health Link Ombudsman).
8. Effective August 1, 2019, Petitioner was approved for Medicaid through the Healthy Michigan Plan. (Department's Exhibit #1, page 19).
9. On October 8, 2019, Petitioner was referred for Home Help Services (HHS) through the Department. (Department's Exhibit #1, page 13).
10. On November 5, 2019, the ASW completed an assessment with Petitioner. (Department's Exhibit #1, page 12).
11. On November 18, 2019, the ASW met with Petitioner's care provider. (Department's Exhibit #1, page 13).
12. That same day, the Department sent Petitioner a Services Approval Notice stating that, effective November 18, 2019, Petitioner was approved for \$ [REDACTED] per month of HHS. (Petitioner's Exhibit #6, page 24; Department's Exhibit #1, page 13).
13. On March 12, 2020, the Michigan Office of Administrative Hearings and Rules (MOAHR) received the request for hearing filed in this matter.
14. The matter was consolidated with another matter involving Petitioner and

the ICO.

15. The hearing was also delayed because Petitioner had requested an in-person hearing while MOAHR had suspended all in-person administrative hearings due to the COVID-19 pandemic.
16. Following a prehearing conference on December 2, 2020 and a status conference on January 7, 2021, it was determined that the hearing would be held via video conferencing.
17. On March 2, 2021, the consolidated hearing was held and completed as scheduled via conferencing.

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.

Regarding approvals of HHS, Adult Services Manual (ASM) 150 (2-1-2019) provided in part:

When Home Help services or Adult Community Placement services are approved, the DHS-1210, Services Approval Notice, is sent indicating what services will be authorized. For Home Help services, a copy of the client's Functional Assessment Summary Time and Task should be included with the DHS-1210 if a caregiver or agency provider has not been identified. This will inform the client what services they are eligible for.

If Home Help services will be authorized and a caregiver or agency provider has been approved in CHAMPS, note the amount and the payment effective date. Print and attach a copy of the providers Time and Task worksheet. The DHS-1210 is completed and generated through MiAIMS and sent to the client.

Moreover, regarding payment authorizations for approved HHS, ASM 140 (4-1-2018) provided in part:

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).

ASM 140, page 1

Additionally, regarding enrollment for providers, ASM 135 (10-1-2019) provided in part:

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.

* * *

The determination of a caregiver's criteria is the responsibility of the adult services worker (ASW). Determine the caregiver's ability to meet the following minimum criteria during a face-to-face interview with the client and the caregiver:

ASM 135, pages 1-2

Specific criteria that the ASW must review for potential caregivers includes age; ability; physical health; knowledge; personal qualities; criminal history; and availability for training. See ASM 135, pages 2-3.

The ASW must also explain a number of points to a potential caregiver during the required initial interview. See ASM 135, pages 3-6.

Here, as discussed above, Petitioner was referred for HHS on October 8, 2019; the ASW completed a comprehensive assessment with Petitioner on November 5, 2019; the ASW met with Petitioner's care provider on November 18, 2019; and the Department sent Petitioner a Services Approval Notice stating that, effective November 18, 2019, Petitioner was approved for \$ [REDACTED] per month of HHS on November 18, 2019.

On appeal, Petitioner argues that the Department erred by only reimbursing Petitioner and her caregiver for services as of November 18, 2019. In particular, Petitioner argues that the Department failed to provide proper notice of changes in Petitioner's Medicaid coverage as required; and that the Department should therefore both reinstate

Petitioner's Medicaid coverage as of April 1, 2019 and pay for services provided between April 1, 2019 and November 17, 2019.

Petitioner bears the burden of proving by a preponderance of the evidence that the Department erred. Moreover, the undersigned Administrative Law Judge is limited to reviewing the Department's actions in light of the information it had at the time it made the decision.

Given the record and applicable policies in this case, the undersigned Administrative Law Judge finds that Petitioner has failed to meet her burden of proof and that Respondent's decision must therefore be affirmed.

As provided above, specific criteria must be met and specific events must occur before HHS can be authorized to be provided for a beneficiary by a particular provider, including an interview with and screening of the proposed provider by the assigned ASW; and, in this case, it is clear that the required interview did not occur until November 18, 2019 and that, consequently, HHS by Petitioner's provider could not be authorized or reimbursed prior to that date.

To the extent Petitioner disputes the eligibility determinations made by the Department, that dispute is beyond the scope of this proceeding as, regardless of whether Petitioner had Medicaid coverage, which she undisputedly did for at least some of the time period prior to November 18, 2019 in dispute, or if the lack of Medicaid was the result of Department error, which is not clear from the record, other criteria still had to be met before Petitioner could be approved for HHS through the Department.² Home Help Services are separate from Medicaid coverage and payments could not be authorized prior to all criteria for services being met; and, in this case, there is no basis for payment for HHS prior to the referral and approval made by the Department.³

²The undersigned Administrative Law Judge would also note that, with respect to the times when Petitioner did not have full Medicaid coverage, the time for Petitioner to first raise the issue with the Department was when she received her eligibility notice in February of 2019. While the undersigned Administrative Law Judge appreciates that the notice may have been confusing, with the notice stating that Petitioner was not eligible as of April 1, 2019 and that she was eligible and had full coverage for the Medicare Savings Program, the crux of that notice was that Petitioner would be receiving assistance with payments for her Medicare coverage, but was not receiving any other form of Medicaid. See, e.g., Bridges Eligibility Manual (BEM) 165 on the Medicare Savings Program.

³ In her request for hearing and in later filings, Petitioner also argued that the Department erred by authorizing HHS in an amount less than what she had been receiving for personal care services through the MI Health Link Program. However, Petitioner did not raise that issue during the hearing or offer any argument or evidence in support of it. Accordingly, the argument appears to have been abandoned and, to the extent it was not, Petitioner failed to meet her burden of proof with respect to it.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly determined the start date of payments for Petitioner's HHS and declined to make payments for personal care services provided to Petitioner during the time period of April 1, 2019 through November 17, 2019.

IT IS, THEREFORE, ORDERED that:

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



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

Counsel for Respondent

Erin Diesel Roumayah
Office of the General Counsel
2850 W. Grand Blvd
Detroit, MI 48202
eroumay1@HAP.ORG

DHHS -Dept Contacts

Allison Repp
Karen Everhart
400 S Pine Street, 5th Floor
CAPITAL COMMONS
LANSING, MI 48909
ReppA@michigan.gov
EverhartK1@michigan.gov

DHHS -Dept Contact

Michelle Martin
Capitol Commons
6th Floor
Lansing, MI 48909
MDHHS-HOME-HELP-POLICY@michigan.gov

DHHS-Location Contact

Sherry Reid
Oakman Adult Services
3040 W. Grand Blvd., Suite L450
Detroit, MI 48202
ReidS1@michigan.gov

**DHHS Department Rep.
Ageny Representative**

M. Carrier
Allison Pool
Appeals Section
PO Box 30807
Lansing, MI 48933
MDHHS-Appeals@michigan.gov

Counsel for Petitioner

Elisa M. Gomez
2727 Second Ave, Suite 301
Detroit, MI 48201
egomez@lakeshorelegalaid.org

Petitioner

[REDACTED]
[REDACTED]
[REDACTED], MI [REDACTED]