

GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]

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Date Mailed: August 10, 2020
MOAHR Docket No.: 20-002225
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 June 17, 2020. [REDACTED], the Petitioner, appeared on her own behalf. Allison Pool, Appeals Review Officer (ARO), represented the Department of Health and Human Services (Department). Robbin Hopkins, Adult Services Worker (ASW), and Margo Peterson, Adult Services Supervisor, appeared as witnesses for the Department.

During the hearing proceedings, the Department's Hearing Summary Packet was admitted as Exhibit A, pp. 1-13.

As a preliminary matter, the Department's request for a dismissal asserting there was no appealable issue was denied. The Department denied Petitioner's HHS referral due to missing the scheduled home visit. The Department did not issue written notice of the determination. (Exhibit A, p. 2) The Department's failure to issue written notice of the denial does not mean there is no appealable issue. The Department's denial of Petitioner's HHS referral is an appealable issue. Further, the Department's dismissal request asserted that Petitioner never submitted the DHS-390 services application and that the DHS-54A Medical Needs form that was submitted was too old. (Exhibit A, p. 2) However, the ASW's contact note from the attempted home visit indicates that an application was submitted because the ASW stated that she tried to call Petitioner at the telephone number listed on the application. (Exhibit A, p. 10) Additionally, the Department's records do not show that a more current DHS-54A was requested. It appears that only a DHS-390 services application was generated to send with the ILS introduction letter. (Exhibit A, p. 9) Accordingly, the Department's request for a dismissal is denied.

ISSUE

Did the Department properly deny Petitioner's February 3, 2020, Home Help Services (HHS) referral?

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 February 3, 2020, the Department received a DHS-54A Medical Needs form completed by Petitioner's doctor on October 24, 2019. (Exhibit A, p. 12)
2. On February 3, 2020, the Department entered an HHS referral for Petitioner. (Exhibit A, p. 8)
3. On February 4, 2020, the Department sent Petitioner an ILS Intro Letter and a DHS-390 Services Application. (Exhibit A, p. 9)
4. On February 20, 2020, the Department sent Petitioner a Home Visit Letter scheduling an appointment for March 13, 2020, between 10:00 am and noon. (Exhibit A, p. 9)
5. On March 13, 2020, at 11:52 am, the ASW attempted to complete the scheduled home visit. Upon arrival the ASW tried to call Petitioner at the telephone number listed on the application, but no one answered, and the voicemail was full. A security guard at Petitioner's apartment building told the ASW that Petitioner left earlier. (Exhibit A, p. 10)
6. On March 13, 2020, Petitioner called the ASW shortly after the attempted home visit and left two voicemails. (Exhibit A, p. 11)
7. On March 13, 2020, the ASW denied Petitioner's HHS referral because the scheduled assessment was not completed. (Exhibit A, p. 8)
8. The Department did not issue written notice of the denial to Petitioner. (Exhibit A, p. 2)
9. On March 31, 2020, Petitioner's Request for Hearing was received by the Michigan Office of Administrative Hearings and Rules (MOAHR). (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) 110 addresses the HHS referral process:

REFERRAL INTAKE

A referral for Home Help servcies [sic] 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

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.

Adult Services Manual (ASM) 110,
January 1, 2018, pp. 1-2

Additionally, Adult Services Manual (ASM) 105 addresses the Eligibility Criteria and the DHS-390 Application for Services as well as the DHS-54A Medical Needs form:

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.

Adult Services Manual (ASM) 105,
January 1, 2018, p. 1.

Adult Services Manual (ASM) 115 addresses Adult Services Requirements:

APPLICATION FOR SERVICES (DHS-390)

The client must complete and sign a DHS-390, Adult Services Application, to receive home help services. An authorized representative or other person acting for the client may sign the DHS-390 if the client either:

- Is incapacitated.
- Has a court-appointed guardian.

A client unable to write may sign with an X, witnessed by one other person (for example, relative or department staff). The Adult Services Worker (ASW) **must not** sign the DHS-390 on behalf of the client.

Note: When a DHS-390 is signed by someone other than the client or guardian and received in the local office, a referral may be entered on Michigan Adult Integrated Management System (MiAIMS). The referral date must be the date the application was received in the local office, however a new DHS-390 must be obtained with proper signatures to verify the client wants the services requested.

The DHS-390 remains valid unless the case record is closed for more than 90 days.

MEDICAL NEEDS FORM (DHS-54A)

The DHS-54A, Medical Needs, form must be signed and dated by a medical professional certifying a medical need for personal care services. 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 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.
- 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 medical needs form has a specified time frame for needed services and that time frame has elapsed.

At each case review the ASW must document in the general narrative if a medical needs form is or is not needed.

The client 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 personal care services.** Needed services are determined by the comprehensive assessment conducted by the Adult Services Worker.

Home help services cannot be authorized prior to the date of the medical professional's signature on the DHS-54A.

The medical needs form does not serve as the application for services. If the signature date on the DHS-54 is **before** the date on the DHS-390, payment for home help services must begin on the date of the application.

Example: The local office adult services unit receives a DHS-54A signed on 07/18/2017 but a referral for home help was never made. The adult services staff enters a referral on MiAIMS and mails an application to the client. The application is returned to the office with a signature date of 08/07/2017. Payment cannot begin until 08/07/2017, or later,

if the caregiver was not working during this time period or not enrolled. Refer to ASM 135 for information regarding caretaker enrollment.

Note: If the DHS 390 is received prior to a referral, the date stamp of when the application was received by the local office is used as the referral and application date.

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.

Veteran's Administration (VA)

A DHS-54A completed by a Veteran's Administration physician or the VA medical form in lieu of the medical needs form is acceptable.

COMPREHENSIVE ASSESSMENT (MDHHS-5534)

Conduct a face-to-face interview with the client in their home to assess the personal care needs. Complete the MDHHS-5534, Adult Services Comprehensive Assessment, which is generated from MiAIMS; see ASM 120, Adult Services Comprehensive Assessment.

NOTIFICATION OF ELIGIBILITY DETERMINATION

If home help services are approved, complete and send a DHS-1210, Services Approval Notice, indicating what services will be provided. If home help services will be authorized, note the amount and the payment effective date, along with a copy of the time and task mailed to the client. ASW is required to mail a second copy of the time and task to the chosen provider on behalf of the client for review. If home help services are denied, send a DHS-1212A, Adequate Negative Action Notice, stating the reason for the denial; see ASM 150, Notification of Eligibility Determination.

Adult Service Manual (ASM) 115
January 1, 2018, pp. 1-5

On February 3, 2020, the Department received a DHS-54A Medical Needs form completed by Petitioner's doctor on October 24, 2019. (Exhibit A, p. 12) The evidence

indicates receipt of this medical certification was used to start an HHS referral for Petitioner as the Department entered an HHS referral for Petitioner on February 3, 2020. (Exhibit A, p. 8)

On February 4, 2020, the Department sent Petitioner an ILS Intro Letter and a DHS-390 Services Application. (Exhibit A, p. 9) If the DHS-54A Medical Needs form was too old (more than 90 days), the Department should have requested an updated medical certification with the ILS introduction letter. However, the Department's records do not show that a DHS-54A Medical Needs form was generated to send with the ILS Intro Letter, or at any other time before this HHS referral as denied. (Exhibit A, pp. 8-11) Further, the Department's assertion that Petitioner never returned the application form is contradicted by the ASW's note from the attempted home visit that states the ASW tried to call Petitioner at the telephone number listed on the application. (Exhibit A, pp. 2 and 11; ASW Testimony)

On February 20, 2020, the Department sent Petitioner a Home Visit Letter scheduling an appointment for March 13, 2020, between 10:00 am and noon. (Exhibit A, p. 9) On March 13, 2020, at 11:52 am, the ASW attempted to complete the scheduled home visit. Upon arrival the ASW tried to call Petitioner at the telephone number listed on the application, but no one answered, and the voicemail was full. A security guard at Petitioner's apartment building told the ASW that Petitioner left earlier. (Exhibit A, p. 10)

On March 13, 2020, Petitioner called the ASW and left two voicemails shortly after the ASW left the home. (Exhibit A, p. 11) On March 13, 2020, the ASW denied Petitioner's HHS referral. (Exhibit A, p. 8) The ASW testified that while the voicemails were left on the Friday of the scheduled home visit, that is her field day. Therefore, she did not retrieve them until Monday. (ASW Testimony) However, the contact note was modified by the ASW late in the evening on March 13, 2020, not the following Monday. (Exhibit A, p. 11)

On March 13, 2020, the ASW denied Petitioner's HHS referral due to the missed home visit for the assessment. (Exhibit A, p. 8) It was uncontested that the Department failed to issue the required written notice of the eligibility determination to Petitioner.

Petitioner testified that the security guard was supposed to tell the ASW to go to the building office. The office was to explain to the ASW that Petitioner had an emergency call and please give her 20 minutes to return. Petitioner indicated that the reason she had to step out was because she had gotten a call that she needed to bring in her ID and fill out forms relating to her request to move to a lower apartment due to her medical conditions. Petitioner was not expecting to get a call asking for this during the time the ASW was supposed to come. Petitioner was talking with them when the ASW tried to call her. Petitioner tried to call the ASW back, but the ASW would not answer. Petitioner acknowledged that she got frustrated when she could not reach the ASW. Petitioner had been trying to apply for the HHS program since October 2019, when she was working with a different DHS local office. (Exhibit A, pp. 6-7; Petitioner Testimony)

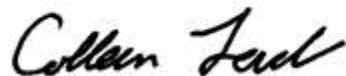
Overall, the evidence establishes that the Department did not follow the above cited ASM policies when they denied Petitioner's February 3, 2020, HHS referral. The Department denied the HHS referral based on missing the scheduled home visit for the assessment. However, the Department failed to issue the required written notice of the denial. Petitioner should have called the ASW as soon as the conflict with the scheduled home visit arose. The ASW's contact information was on the home visit letter. (Exhibit A, p. 9) However, the evidence documents that Petitioner did return the missed call from the ASW that same day, shortly after the ASW came to the home and left the ASW two messages. (Exhibit A, p. 11) As noted above, the Department's assertion that Petitioner never returned the application form is contradicted by the ASW's note from the attempted home visit, which states the ASW called Petitioner at the telephone number listed on the application. (Exhibit A, pp. 2 and 11; ASW Testimony) Similarly, if the DHS-54A Medical Needs form was too old (more than 90 days), the Department should have requested an updated medical certification with the ILS introduction letter. However, the Department's records do not show that a DHS-54A was generated to send with the ILS Intro Letter, or at any other time before this HHS referral was denied. (Exhibit A, pp. 8-11). Accordingly, the Department's March 13, 2020, determination to deny Petitioner's HHS referral cannot be upheld.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department improperly denied Petitioner's February 3, 2020, Home Help Services (HHS) referral.

IT IS, THEREFORE, ORDERED that:

The Department's decision is **REVERSED**. If they have not already done so, the Department shall initiate re-assessing Petitioner's eligibility for the HHS program.



Colleen Lack
Administrative Law Judge
for Robert Gordon, Director
Department of Health and Human Services

CL/dh

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-Location Contact

Sherry Reid
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DHHS Department Rep.

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Petitioner

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