



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: July 1, 2020
MOAHR Docket No.: 20-003166
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Robert J. Meade

DECISION AND ORDER

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

After due notice, a telephone hearing was held on June 23, 2020. Petitioner appeared and testified on her own behalf. Theresa Root, Appeals Review Officer, represented Respondent, Michigan Department of Health and Human Services (MDHHS or Department). Fonda Jones, Adult Services Worker (ASW), appeared as a witness for the Department.

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. Petitioner is a [REDACTED] year-old Medicaid beneficiary, born [REDACTED] who was originally referred to HHS on or about April 12, 2019. (Exhibit A, p 18; Testimony)
2. On May 22, 2019, the ASW conducted a comprehensive assessment with Petitioner in Petitioner's home. (Exhibit A, p 19; Testimony)
3. Also, on May 22, 2019, the ASW sent Petitioner a denial notice indicating that her HHS application was denied because she had a Medicaid spend-down. (Exhibit A, p 19; Testimony)
4. On July 7, 2019, Petitioner reapplied for HHS. (Exhibit A, p 19; Testimony)

5. 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, p 19; Testimony)
6. On August 19, 2019, the Michigan Office of Administrative Hearings and Rules (MOAHR) received Petitioner's request for hearing with respect to the denials of her requests for HHS. (Exhibit A, p 19; Testimony)
7. On September 19, 2019, an administrative hearing was held and on October 7, 2019, Administrative Law Judge (ALJ) Steven Kibit issued a Decision and Order reversing the Department and finding that the ASW improperly denied Petitioner's HHS application based on her apparent spend down. (Exhibit A, pp 19-20; Testimony)
8. On October 14, 2019, the Department entered a new referral for Petitioner. On October 25, 2019, the ASW completed a comprehensive assessment with Petitioner in Petitioner's home and 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, pp 19-20; Testimony)
9. On January 4, 2020, MOAHR received another request for hearing filed by Petitioner contesting the start date of her HHS. (Exhibit A, p 21; Testimony)
10. On February 25, 2020, an administrative hearing was held and on March 13, 2020 ALJ Kibit issued a Decision and Order which again reversed the Department. ALJ Kibit found that the Department erred in opening a new HHS referral for Petitioner in October 2019 and should have reconsidered the first referral from April 2019. (Exhibit A, pp 18-27; Testimony)
11. On March 18, 2020, the ASW reviewed Petitioner's April 12, 2019 HHS referral as ordered by ALJ Kibit but now found another reason to deny that referral; namely that Petitioner's doctor indicated on the 54A Medical Needs Form that Petitioner would only need assistance for 3 months. (Exhibit A, pp 7-8; Testimony)
12. On April 22, 2020, the ASW issued a new action notice indicating the denial of Petitioner's April 12, 2019 HHS referral and reaffirming the opening of Petitioner's HHS case in October 2019, which was based on a new diagnosis. (Exhibit A, pp 7-8; Testimony)
13. On May 26, 2020, Petitioner's hearing request was received by MOAHR, again contesting the start date of her HHS. (Exhibit A, p 4-6; Testimony)

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 statute, 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 calendar 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 ALJ Kibit 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 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 and ALJ Kibit again reversed the Department and Ordered the Department to reconsider the April 12, 2019 HHS referral. Following that Order, the Department again determined that Petitioner's April 12, 2019 referral was rejected, for a new reason, and Petitioner requested the instant hearing.

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

The ASW testified that she again rejected Petitioner's April 12, 2019 HHS referral because the 54A Medical Needs form accompanying that application indicated in Section L that Petitioner only needed assistance for 3 months (Exhibit A, p 5). The ASW explained that she counted 3 months from the date of Petitioner's injury in February 2019 and concluded that by the time she first considered the April 2019 application in May 2019, those three months had already passed and this represented another reason to reject Petitioner's April 2019 HHS referral.

Petitioner testified that the 54A Medical Needs form actually indicates in Section E that care is needed for 6 months, not 3 months. Petitioner indicated that the date of her injury is irrelevant to the ASW's consideration of her HHS application because Petitioner did not apply for HHS until April 12, 2019 and the doctor signed the 54A Medical Needs Form on April 8, 2019. As such, Petitioner argued that the ASW should begin the count from April 2019, not from February 2019. Petitioner also pointed out that while the ASW indicated that she would contact Petitioner's doctor to confirm how long Petitioner would need care, the ASW never made that contact.

Based on the evidence presented, Petitioner has proven by a preponderance of the evidence that the Department has again erred in determining her start-date for HHS services. First, Section L of Petitioner's April 8, 2019 54A Medical Needs Form, which the ASW relies on, concerns whether the spouse or parent of the disabled individual is unable to provide care and for how long. In that Section, Petitioner's doctor indicated "3 months." Clearly, Section L has no bearing on how long the patient (Petitioner) requires

care as that question is answered in Section E of the form, where Petitioner's doctor indicated that Petitioner would require care for "6 months".

Further, this ALJ agrees with Petitioner that the 6 months of care would begin with the application and approval for HHS, not the date of the injury. Petitioner's doctor is asserting on April 8, 2019 that Petitioner will need care for 6 months from the date he is completing the form, not 6 months from the date of injury. And, of course, even if the doctor meant 6 months from the date of injury in February 2019, Petitioner still would have required care in May 2019 when her April 2019 application was considered.

Finally, the ASW indicated that she would confirm the amount of time care would be needed with Petitioner's doctor but never did so. This would have been important especially given that Petitioner has claimed that her hand and wrist has never fully healed.

As such, the Department's decision was improper and should be reversed.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department improperly determined Petitioner's HHS start-date.

IT IS THEREFORE ORDERED THAT:

The Department's decision is REVERSED.

Within 10 days of the receipt of this Decision and Order, the Department should again reconsider Petitioner's April 12, 2019 HHS referral consistent with this Decision and Order.



RM/sb

Robert J. Meade
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
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DHHS

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