

GRETCHEN WHITMER
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: January 25, 2021
MOAHR Docket No.: 20-007529
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Aaron McClintic

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; 42 CFR 431.200 to 431.250; and 42 CFR 438.400 to 438.424, upon the Petitioner's request for a hearing.

After due notice, a hearing was held on January 19, 2021. Petitioner appeared on her own behalf. Theresa Root, Appeals Review Officer, represented the Department of Health and Human Services (Department). Geri Perry, Adult Services Worker (ASW), testified as a witness for the Department. Department Exhibit A, pp. 1-11 was received and admitted.

ISSUE

Did the Department properly deny Petitioner's request for 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 Medicaid beneficiary who was referred for HHS through the Department. (Exhibit A, p. 9).
2. As part of her application, Petitioner submitted a medical needs form signed by her doctor. (Exhibit A, p.8).
3. However, in that form, the doctor failed to certify that Petitioner had a medical need for assistance with personal care activities. (Exhibit A, p.8).
4. On September 8, 2020, the Department sent Petitioner written notice that her request for HHS was denied because the medical needs form did not certify medical need with personal care activity. (Exhibit A, p. 7).

5. On December 10, 2020, the Michigan Office Administrative Hearings and Rules (MOAHR) received the request for hearing filed in this matter with respect to that denial. (Exhibit A, p. 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.

HHS are governed by the applicable Adult Services Manuals (ASMs) and, with respect to the eligibility criteria for such services, ASM 105 (6-1-2020) provides in part:

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 activities of daily living (ADL).
- Appropriate Level of Care (LOC) status.

ASM 105, page 1

Moreover, with respect the certification of medical need requirement, ASM 105 also provides in part:

Medical Need Certification

Medical needs are certified utilizing the DHS-54A, Medical Needs, form and must be completed by a Medicaid enrolled

medical professional. The medical professional must hold one of the following professional licenses . . .

ASM 105, page 3

Additionally, with respect to the required medical needs form, ASM 115 further states in part:

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.).
- Nurse practitioner.
- Occupational therapist
- Physical therapist.

Note: A physician assistant (PA) is not an enrolled Medicaid provider and **cannot** sign the DHS-54A.

The medical needs form is only required at the initial opening for SSI recipients and disabled adult children (DAC). All other Medicaid recipients must have a DHS-54A completed at the initial opening and annually thereafter.

The client is responsible for obtaining the medical certification of need but the form must be completed by the medical professional and not the [sic] 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 specialist.

If the medical needs form has not been returned, the adult services specialist should follow-up with the client and/or medical professional.

Do **not** authorize home help services prior to the date of the medical professional 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 1/18/2014 but a referral for home help was never made. The adult services staff enters a referral on ASCAP and mails an application to the client. The application is returned to the office with a signature date of 2/16/2014. Payment cannot begin until 2/16/2014, or later, if the provider was not working during this time period.

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.

*ASM 115, page 1
(emphasis added)*

Here, the Department denied Petitioner's application for HHS on the basis that no medical need for personal care activity was certified by Petitioner's doctor as required to approve HHS.

Petitioner acknowledged that her physician failed to certify medical need but believed that this was done in error. Petitioner was advised to make another request for home help service and clearly instruct her physician what is required on the form.

Petitioner bears the burden of proving by a preponderance of the evidence that the Department erred in denying her request for HHS.

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

To the extent Petitioner still needs services and a Medicaid enrolled provider is willing to provide a complete medical needs form, then she can always reapply for HHS along with that new form. With respect to the decision at issue in this case however, the Department's decision must be affirmed given the information that it was given.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly denied Petitioner's request for HHS.

IT IS, THEREFORE, ORDERED that:

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

AM/dh


Aaron McClintic
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

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DHHS

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