



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

Date Mailed: March 22, 2022
MOAHR Docket No.: 22-000322
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 hearing was held on March 16, 2021. [REDACTED], Petitioner's mother and guardian, appeared and testified on Petitioner's behalf. Lisa Frentz, Petitioner's Community Mental Health (CMH) Supports Coordinator appeared as a witness. Allison Pool, Appeals Review Officer, appeared and testified on behalf of Respondent, Michigan Department of Health and Human Services (MDHHS, Respondent or Department). Erica Smigill, Adult Services Worker (ASW), and Jaime Lucente, ASW appeared as witnesses for the Department.

ISSUE

Did the Department properly deny Petitioner's Home Help Services (HHS) application and then properly determine his eligibility date for 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 an [REDACTED]-year-old Medicaid beneficiary, born May 1, 2003, who was referred for HHS on or about April 30, 2021. (Exhibit A, p 14; Testimony)
2. On April 30, 2021, Petitioner's CMH Supports Coordinator personally delivered an HHS referral form to the Department's local office. (Exhibit A, p 7; Testimony)
3. Petitioner's mother and guardian called the local office to check on the status of the referral on May 17, 2021, June 14, 2021, June 28, 2021, July 12, 2021, July 26, 2021, August 9, 2021, August 23, 2021, and September 6, 2021. Each time Petitioner's mother and guardian called the local office, giving Petitioner's name and date of birth for reference, she

was told that Petitioner's HHS referral was pending, or in process. (Exhibit A, p 7; Testimony)

4. Petitioner's CMH Supports Coordinator also called the local office once during the summer of 2021 to check on Petitioner's referral and was also told that it was pending. (Exhibit A, p 7; Testimony)
5. On September 16, 2021, Petitioner's CMH Supports Coordinator again called the local office and was told, for the first time, that they had never received Petitioner's HHS referral. Petitioner's Supports Coordinator immediately printed a new referral form, had it filled out by Petitioner's mother and guardian, and delivered it to the local office that same day. (Exhibit A, p 7; Testimony)
6. On September 16, 2021¹, the Department mailed Petitioner an HHS application packet, including a 54A medical needs form, with instructions indicating that, per policy, the completed forms needed to be returned to the Department within 21 calendar days from the date the forms were mailed to Petitioner. (Exhibit A, p 11; Testimony)
7. On October 20, 2021, the Department's ASW sent Petitioner a Negative Action Notice indicating that HHS was denied for failure to return the forms within the allowed 21 calendar days. (Exhibit A, pp 15-16; Testimony)
8. On October 21, 2021, Petitioner's mother and guardian received in the mail the HHS application packet and 54A medical needs form purportedly mailed by the Department on September 16, 2021, and due by October 7, 2021. (Exhibit A, p 7; Testimony)
9. On October 22, 2021, Petitioner's mother and guardian called the Department regarding the receipt of the forms and the Department put in a new referral for HHS that same day. (Exhibit A, pp 7, 17; Testimony)
10. Following the completion of the HHS application forms and 54A medical needs form, as well as a telephone assessment, Petitioner was approved for HHS retroactive to October 22, 2021. Petitioner was later approved for expanded HHS retroactive to the same date. (Exhibit A, pp 20-31; Testimony)
11. On January 11, 2022, Petitioner's hearing request was received by the Michigan Office of Administrative Hearings and Rules. (Exhibit A, p 5)

¹ The date the paperwork was mailed is not included in the Department's evidence packet, but the ASW was able to look it up during the hearing.

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.

Adult Services Manual (ASM) 115 addresses HHS requirements:

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.

*Adult Services Manual (ASM) 115
January 1, 2018, pp 1-2 of 5*

Adult Services Manual (ASM) 105 addresses HHS eligibility requirements:

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 Program Enrollment Type (PET) codes.**

*Adult Services Manual (ASM) 105
January 1, 2018, p 1 of 4*

Adult Services Manual (ASM) 110 addresses HHS eligibility requirements:

OVERVIEW

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

Referral Registration

The taking of a referral for the Home Help program involves four steps:

1. Enter known information about the client into the *Quick or Advanced Search* in MiAIMS. The client search will provide one of three results:
 - No matching record found.
 - One result. One result will open the case in a 360 screen.
 - More than one result. More than one result lists possible matches to the client.

In all three search results, add a new referral by clicking the *Add New Client/Add Referral* button under the *Client Action* section on MiAIMS.

2. Enter basic client information and demographics in the Client *Information* tab in MiAIMS.
3. Complete the Referral Information in MiAIMS by entering the *referral* date and time, source, and basic need for services.

Note: If the referral date or time in MiAIMS is not the actual receipt of the *referral*, the date and time must be adjusted in MiAIMS.

4. Complete a Bridges search for eligibility, correct Medicaid, and *appropriate* program enrollment type (PET) code or benefit plan (BP). Upon saving a referral in MiAIMS a log referral ID number is generated.

Case Assignment and Disposition

The supervisor or their designee assigns the pending referral to the adult services worker (ASW) using the Assign Worker button under the Case Action section in MiAIMS.

Documentation

The ASW must print the introduction letter, the DHS-390, Adult Services Application, and the DHS-54A, Medical Needs form located in the Forms module 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 the day after the referral is received and entered on MiAIMS. The referral date entered on MiAIMS must be the date the referral was received in the local office. The computer system calculates 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 DHS-54A, Medical Needs form does not serve as an application for services. If the local office receives a DHS-54A as the initial request for services, a referral must be entered on MiAIMS for the date the form was received in the local office and an application mailed or given to the individual requesting services. After receiving the assigned referral, the ASW gathers information through an assessment, contacts, etc. and decides to approve or deny the referral; see ASM 115, Adult Services Requirements.

CONTACT

For questions contact MDHHS-Home-Help-Policy@michigan.gov.

*Adult Services Manual (ASM) 110
June 1, 2020, p 1-2*

The Department's first ASW testified that on September 16, 2021, the Department mailed Petitioner an HHS application packet, including a 54A medical needs form, with instructions indicating that, per policy, the completed forms needed to be returned to the Department within 21 calendar days from the date the forms were mailed to Petitioner. The ASW indicated that on October 20, 2021, she sent Petitioner a Negative Action Notice indicating that HHS was denied for failure to return the forms within the allowed 21 calendar days.

The Department's second ASW testified that on October 22, 2021, Petitioner's mother and guardian called the Department indicating that she had just received the aforementioned HHS forms and the ASW put in a new referral for HHS that same day. The ASW testified that following the completion of the HHS application forms and 54A medical needs form, as well as a telephone assessment, Petitioner was approved for HHS retroactive to October 22, 2021. The ASW noted that Petitioner was later approved for expanded HHS retroactive to the same date.

Petitioner's mother and guardian testified that on April 30, 2021, Petitioner's CMH Supports Coordinator personally delivered an HHS referral form to the Department's local office. Petitioner's mother and guardian indicated that she then called the local office to check on the status of the referral on May 17, 2021, June 14, 2021, June 28, 2021, July 12, 2021, July 26, 2021, August 9, 2021, August 23, 2021, and September 6, 2021. Petitioner's mother and guardian testified that each time she called the local office, giving Petitioner's name and date of birth for reference, she was told that Petitioner's HHS referral was pending, or in process. Petitioner's mother and guardian testified that on September 16, 2021, she heard from Petitioner's CMH Supports Coordinator, who informed her that she had called the local office to check on Petitioner's referral and was told that they never received it. Petitioner's mother and guardian testified that the Supports Coordinator immediately printed a new referral form, had it filled out by Petitioner's mother and guardian, and delivered it to the local office that same day. Petitioner's mother and guardian testified that she called in early October to check on the status of the referral and was told that it was in process. Petitioner's mother and guardian testified that on October 21, 2021, she received in the mail the HHS application packet and 54A medical needs form purportedly mailed by the Department on September 16, 2021, and due by October 7, 2021. Petitioner's mother and guardian testified that on October 22, 2021, she called the Department regarding the receipt of the forms, and the Department put in a new referral for HHS that same day. Petitioner's mother and guardian testified that after further issues with getting a provider set up, Petitioner's HHS was ultimately approved in January 2022, retroactive to October 22, 2021.

Petitioner's Supports Coordinator testified that she personally dropped off Petitioner's HHS referral at the local office on April 30, 2021. Petitioner's Supports Coordinator testified that she did call once during the summer of 2021 and was told that the referral was still in process. Petitioner's Supports Coordinator testified that on September 16, 2021, she again called the local office and was told, for the first time, that they had never received Petitioner's HHS referral. Petitioner's Supports Coordinator testified that she immediately printed a new referral form, had it filled out by Petitioner's mother and guardian, and delivered it to the local office that same day.

Per policy, the ASW could not approve Petitioner for HHS without an HHS application and a completed 54A medical needs form. However, policy in ASM 110 also imposes on the Department a reasonable standard of promptness for processing HHS referrals. Here, Petitioner has proven by a preponderance of the evidence that an HHS referral was personally delivered to the HHS office on April 30, 2021. That referral was clearly

lost or mishandled by the Department. If this referral had been handled properly, the ASW would have needed to complete an eligibility determination within 45 days, or by June 14, 2021. Since there is little question that Petitioner is and always was eligible for HHS, including expanded HHS, Petitioner's eligibility for HHS should be retroactive to June 14, 2021. The Department should subtract from that eligibility the dates Petitioner was in the hospital, July 29, 2021 through August 25, 2021. The Department may also require Petitioner's physician to attest that Petitioner's needs and conditions were the same as of June 14, 2021 as they were on October 22, 2021; however, given Petitioner's long running disability, that should not be necessary.

Given the above, the Department's decision was improper and must be reversed.

DECISION AND ORDER

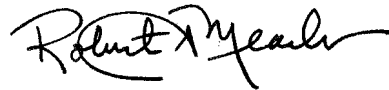
The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department improperly denied Petitioner's HHS based on the available information and improperly determined the start date for his HHS.

IT IS THEREFORE ORDERED THAT:

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

Petitioner's eligibility for HHS shall be retroactive to June 14, 2021. The Department should subtract from that eligibility the dates Petitioner was in the hospital, July 29, 2021 through August 25, 2021.

Within 10 days of this Decision and Order, the Department shall certify that it has taken steps consistent with this Order.



RM/tem

Robert J. Meade
Administrative Law Judge

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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