

GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

IN THE MATTER OF:

MOAHR Docket No.: 22-000997

Petitioner

Agency Case No.: 0

v

Case Type: HHP

**Michigan Department of Health and
Human Services,
Respondent**

**Issued and entered
this 12th day of May 2022
by: Robert J. Meade
Administrative Law Judge**

PROPOSAL FOR DECISION

This matter is before the Michigan Office of Administrative Hearings and Rules pursuant to Michigan Compiled Laws 400.1, *et seq.*, the Michigan Administrative Code (MAC) R 400.3401, *et seq.* and MAC R 792.10101, *et seq.*, and the Michigan Compiled Laws 24.271, *et seq.*

After due notice, a hearing was held on May 11, 2022. Petitioner, [REDACTED], appeared and testified on her own behalf.

Leigha Burghdoff, Appeals Review Officer, appeared on behalf of Respondent, Michigan Department of Health and Human Services (MDHHS or Department). Chelsey Pung, Departmental Analyst, and Anna Kaufman, Adult Services Worker, appeared as witnesses for the Department.

ISSUE

Did the Department properly terminate Petitioner's enrollment as a service provider in the Home Help Services (HHS) program?

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 has been her son's HHS provider since at least January 18, 2018. Petitioner also serves as her son's legal guardian. (Exhibit A, pp 7-10; Testimony)
2. On February 8, 2019, MSA Bulletin 19-03 Provider Enrollment Fitness Criteria was issued with an effective date of April 1, 2019. Prior to the issuance of MSA Bulletin 19-03, a Home Help client could use the personal choice selection process to employ a legal guardian with a criminal history as his or her individual caregiver. However, Section I.B. of MSA Bulletin 19-03 removed this option. (Exhibit A, pp 25-32; Testimony)
3. On December 29, 2014, Petitioner was convicted of Attempted Assault/Resist/Obstruct PO, a permissive exclusion conviction per policy. (Exhibit A, p 11; Testimony)
4. On January 31, 2022, the Department sent Petitioner a letter informing her that because Petitioner was her son's guardian and had a permissive conviction on her record, she would no longer be able to provide HHS to her son. This notice also included Petitioner's appeal rights. (Exhibit A, pp 12-13; Testimony)
5. On February 1, 2022, the Department sent Petitioner a second letter outlining the applicable policy and informing Petitioner that she would no longer be able to serve as her son's HHS provider as of April 1, 2022. The Department allowed Petitioner 60 days per policy to either find a new guardian or a new HHS provider for her son. (Exhibit A, p 19; Testimony)
6. On March 10, 2022, Petitioner's hearing request was received by the Michigan Office of Administrative Hearings and Rules. (Exhibit A, pp 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 health professional and may be provided by individuals or by private or public agencies.

Medical Services Administration Bulletin, MSA 19-03 issued February 8, 2019, and effective April 1, 2019, sets forth the Provider Enrollment Fitness Criteria policy for all providers of personal care services that are delivered through the Michigan Medicaid Home Help program and the MI Choice Waiver program. MSA 19-03 states in part:

The purpose of this bulletin is to notify Medicaid providers that effective April 1, 2019, the Michigan Department of Health and Human Services (MDHHS) will implement provider enrollment fitness criteria. Consistent with 42 CFR 431.51(c)(2), 42 CFR 455.452, and pursuant to Michigan's Social Welfare Act (Public Act 280 of 1939 [MCL 400.111e]), the Medicaid single state agency is required, and has the authority, to set reasonable standards and screening related to the qualifications of providers, and may define exclusions that the Medicaid Director determines necessary to protect the best interests of the program and its beneficiaries. The criteria define federal and state felonies and misdemeanors that would prohibit a provider from participating in the State's Medicaid programs.

B. Home Help Providers

Personal Choice and Acknowledgement of Provider Selection: A beneficiary receiving personal care services through the Medicaid Home Help program may select any family member or other individual who has been convicted of certain crimes by signing a personal acknowledgement form. The beneficiary must submit their request on the Personal Choice and Acknowledgement of Provider Selection form (MSA-119) that indicates receipt of notification of the criminal offense(s) which prompted the exclusion and must indicate their selection of that provider to deliver services. The selection shall not be considered effective and eligible for payment until the signed acknowledgement has been received, processed, and recorded by MDHHS.

Personal choice selections are subject to the following restrictions:

- The provider does not have a disqualifying conviction that is one of the four exclusions under 42 USC 1320a-7.
- The provider is 18 years or older.
- The provider is not legally responsible for the beneficiary.
- The provider must be capable of providing the required services and must be otherwise qualified to do so.
- The provider has complied with the criminal history screening conducted by MDHHS.

- The provider is not an agency or associated with an agency (supersedes policy in bulletin MSA 15-13).

A personal choice selection may be applied for the limited purpose of providing Home Help services to the specific beneficiary identified in the Personal Choice and Acknowledgement of Provider Selection form (MSA-119). A personal choice selection shall not be construed as approval, authorization or permission to provide services to other beneficiaries. Providers selected through the personal choice provisions of this section must be registered in CHAMPS and other systems (if applicable) for the purposes of monitoring, contacting, and generating payments; however, such individuals shall be prohibited from either being placed in the provider referral database or receiving referrals for additional beneficiaries through that process.

This bulletin supersedes Home Help provider enrollment policy in MSA 14-31 and MSA 14-40.

Emphasis added

The policy from MSA 19-03 was later incorporated into the Medicaid Provider Manual, which provides:

2.3.E. HOME HELP – PERSONAL CHOICE AND ACKNOWLEDGEMENT OF PROVIDER SELECTION

A beneficiary receiving personal care services through the Medicaid Home Help program may select any family member or other individual who has been convicted of certain crimes by signing a personal acknowledgement form. The beneficiary must submit their request on the Personal Choice and Acknowledgement of Provider Selection form (MSA-119) that indicates receipt of notification of the criminal offense(s) which prompted the exclusion and must indicate their selection of that provider to deliver services. The selection shall not be considered effective and eligible for payment until the signed acknowledgement has been received, processed, and recorded by MDHHS.

Personal choice selections are subject to the following restrictions:

- The provider does not have a disqualifying conviction that is one of the four exclusions under 42 USC 1320a-7.

- The provider is 18 years or older.
- The provider is not legally responsible for the beneficiary.
- The provider must be capable of providing the required services and must be otherwise qualified to do so.
- The provider has complied with the criminal history screening conducted by MDHHS.
- The provider is not an agency or associated with an agency.

A personal choice selection may be applied for the limited purpose of providing Home Help services to the specific beneficiary identified in form MSA-119. A personal choice selection shall not be construed as approval, authorization or permission to provide services to other beneficiaries. Providers selected through the personal choice provisions of this section must be registered in CHAMPS and other systems (if applicable) for the purposes of monitoring, contacting, and generating payments; however, such individuals shall be prohibited from either being placed in the provider referral database or receiving referrals for additional beneficiaries through that process.

*Medicaid Provider Manual
General Information for Providers Chapter
January 1, 2022, p 9
Emphasis added*

The Department's witnesses testified that on January 31, 2022, the Department sent Petitioner a letter informing her that because Petitioner was her son's guardian and had a permissive conviction on her record, she would no longer be able to provide HHS to her son. The Department's witnesses testified that on December 29, 2014, Petitioner was convicted of Attempted Assault/Resist/Obstruct PO, a permissive exclusion conviction per policy. The Department's witnesses indicated that on February 1, 2022, the Department sent Petitioner a second letter outlining the applicable policy and informing Petitioner that she would no longer be able to serve as her son's HHS provider as of April 1, 2022, in order to give Petitioner the 60 days allowed per policy to either find a new guardian or a new HHS provider for her son.

Petitioner testified that she could not understand what this was all about given that it is now 2022 and this conviction occurred in 2014. Petitioner indicated that the incident that led to the conviction was beyond her control and that she had served her time and

discharged her debt to society, including restitution. Petitioner testified that she is the guardian for her son, who is fighting for his life and there is no way he is threatened or afraid of her. Petitioner indicated that she was not aware of this policy and the policy does not make sense. Petitioner testified that she is a single mother trying to take care of her son and she and her son are the victims here. Petitioner testified that hers is a family in crisis as Petitioner's son has stage 5 kidney disease.

Based upon a preponderance of the evidence, the Department properly determined that Petitioner was no longer eligible to serve as her son's HHS provider because the policy in MSA Bulletin 19-03, and the MPM, clearly excludes persons who have a permissive exclusion and are legally responsible for the client from using the Acknowledgement of Provider Selection option. And, while the undersigned can certainly sympathize with Petitioner and her situation, the undersigned has no authority to ignore clear policy or grant Petitioner equitable relief. The policy also does not provide for any exceptions. Accordingly, the Department was correct in terminating Petitioner's enrollment in the Michigan Medicaid program as a Home Help Provider.

PROPOSAL FOR DECISION

The Administrative Law Judge, based upon the above findings of fact and conclusions of law, decides that the Department properly terminated Petitioner's enrollment in the Michigan Medicaid program as a Home Help Provider.

IT IS THEREFORE PROPOSED THAT:

The Administrative Law Judge, based on the above findings of fact and conclusions of law, RECOMMENDS that the Department's decision terminating Petitioner's enrollment in the Michigan Medicaid program as a Home Help Provider be **AFFIRMED**.

EXCEPTIONS

Pursuant to 2015 AACs R 792.10132, the parties may file exceptions to this proposal for decision within 21 days after the proposal for decision is issued and entered. An opposing party may file a response to exceptions within 14 days after exceptions are filed. All exceptions and responses must be filed with the Michigan Office of Administrative Hearings and Rules, P.O. Box 30695, Lansing, Michigan 48909-8195, and served on all parties to the proceeding.



RM:tem

Robert J. Meade
Administrative Law Judge

PROOF OF SERVICE

I certify that I served a copy of the foregoing document upon all parties, to their last-known addresses in the manner specified below, this 12th day of May 2022.

Teresa E. Myers
Teresa Myers
**Michigan Office of Administrative
Hearings and Rules**

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