



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: February 27, 2023
MOAHR Docket No.: 23-000170
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Steven Kibit

DECISION AND ORDER

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

After due notice, a telephone hearing was held on February 15, 2023. [REDACTED] Petitioner's sister, appeared and testified on Petitioner's behalf. [REDACTED] Petitioner's brother-in-law, also testified as a witness for Petitioner. John Lambert, Appeals Review Officer, appeared and testified on behalf of the Respondent Department of Health and Human Services (DHHS or Department). Kristen Robinson, Adult Services Worker (ASW) testified as a witness for the Department.

During the hearing, the Department offered one evidence packet/exhibit that was admitted into the record as Exhibit A, pages 1-33. Petitioner did not offer any exhibits.

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 on May 9, 2022. (Exhibit A, page 8).
2. As part of that application, Petitioner submitted a medical needs form completed and signed by his doctor on May 4, 2022. (Exhibit A, page 18; Testimony of ASW).
3. In the medical needs form, the doctor checked "NO" when asked to certify that Petitioner had a medical need for assistance with any of the personal care activities listed on the form. (Exhibit A, page 18).

4. The Department subsequently denied Petitioner's request for HHS on the basis that no medical professional had certified a medical need for services as required. (Testimony of ASW).
5. On September 8, 2022, Petitioner's representative emailed the Department with new information. (Exhibit A, page 20).
6. Petitioner's representative also indicated that Petitioner's doctor should have mailed the Department a medical needs form. (Exhibit A, page 20).
7. The Department treated the email as a new referral for services, with a referral date of September 9, 2022. (Exhibit A, pages 8, 19).
8. The ASW also emailed back on September 9, 2022, to indicate that she had not received any new medical needs form. (Exhibit A, page 19).
9. On September 29, 2022, the ASW telephoned Petitioner and advised him that, while she could use an assessment of Petitioner previously completed in response to his earlier application, the medical needs forms submitted along with that application had the doctor checking "NO" when asked to certify a need for services and Petitioner would have to submit a new medical needs form certifying his need for services. (Exhibit A, page 14; Testimony of ASW).
10. Petitioner responded that he was in the hospital and asked that the ASW contact Petitioner's representative. (Exhibit A, page 14; Testimony of ASW).
11. On September 29, 2022, and October 6, 2022, the ASW telephoned Petitioner's representative and left her messages when no one answered. (Exhibit A, page 14; Testimony of ASW).
12. On October 24, 2022, the Department sent Petitioner written notice that his request for HHS was denied. (Exhibit A, page 4).
13. On January 11, 2023, Petitioner's representative telephoned the ASW and reported that Petitioner had passed away in December of 2022. (Exhibit A, page 15; Testimony of Petitioner's representative).
14. Petitioner's representative also requested payment for providing services to Petitioner, but she was then told that no payments could be authorized as the case was never opened. (Exhibit A, page 15; Testimony of Petitioner's representative; Testimony of ASW).
15. On January 18, 2023, the Michigan Office of Administrative Hearings and Rules (MOAHR) received the request for hearing filed in this matter regarding the denial of Petitioner's request for HHS. (Exhibit A, pages 4-7).

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 the following:

- Medicaid eligibility.
- Appropriate program enrollment type (PET) code.
- 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).

ASM 105, page 1

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

Certification of Medical Need

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 015 (1-1-2018) further states in part:

MEDICAL NEEDS FORM (DHS-54A)

The DHS-54A, Medical Needs, form is required for **all** clients receiving Medicaid personal care services. The DHS-54A must be signed and dated by a medical professional certifying a medical need for personal care services. The medical professional must be an existing enrolled Medicaid provider and hold one of the following professional licenses:

- Physician (M.D. or D.O.).
- Nurse practitioner.
- Occupational therapist.
- Physical therapist.
- Physician assistant (PA)

*The client or their representative 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 specialist.

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

*ASM 015, pages 1-2
(Italics added for emphasis)*

Regarding the timeline for decisions, ASM 110 (6-1-2020) further provides:

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.

*ASM 110, page 2
(Italics added for emphasis)*

Here, the Department denied Petitioner's application for HHS on the basis that no medical needs form certifying Petitioner's need for services was received as required to approve HHS.

In appealing that decision, 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.

Per the above policy, for Petitioner to be found eligible for HHS, the Department must receive a medical needs form signed by a Medicaid enrolled provider that certifies a medical need for personal care services related to an existing medical condition for Petitioner and no such form was received in this case prior the denial at issue.

In particular, while a medical needs form was provided, the doctor checked "NO" when asked to certify that Petitioner had a medical need for assistance with any of the personal care activities listed on the form. Moreover, while Petitioner's representative testified that the doctor erred when doing so, the Department can only rely on what it was given and no medical needs form stating otherwise was ever provided.

Furthermore, it is undisputed that, consistent with the above policies, the ASW provided the required form to Petitioner; followed up with Petitioner and Petitioner's

representative when a completed form was not subsequently received; and made a decision as required at the end of the 45-day standard of promptness, with the application having to be denied as the required medical needs had not been received.

Petitioner's representative did ask about getting a tax write off for the services she provided, but that issue is beyond the scope of this proceeding and will not be addressed by the undersigned Administrative Law Judge.

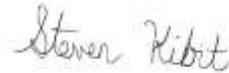
With respect to the decision that is at issue in this case, the Department's decision must be affirmed.

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**.



SK/sj

Steven Kibit
Administrative Law Judge

NOTICE OF APPEAL: Petitioner 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).

Via Electronic Mail:

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Via First Class Mail:

Authorized Hearing Representative

[REDACTED]
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Petitioner

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