



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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MI [REDACTED]

Date Mailed: February 28, 2023
MOAHR Docket No.: 23-000182
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 February 16, 2023. Petitioner appeared and testified on his own behalf. John Lambert, Appeals Review Officer, appeared and testified on behalf of Respondent, Michigan Department of Health and Human Services (MDHHS, Respondent or Department). Kelly Alexander, Adult Services Worker (ASW), appeared as a witness for the Department.

ISSUE

Did the Department properly deny Petitioner's Home Help Services (HHS) application when it did not receive an updated 54-A Medical Needs form (54-A) in a timely manner?

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 to HHS on November 28, 2022. (Exhibit A, p 8; Testimony)
2. On December 2, 2022, the ASW realized that the 54-A submitted with Petitioner's application was signed by a chiropractor. Chiropractors are not approved to sign the 54-A under Medicaid policy. (Exhibit A, p 14; Testimony)
3. On December 2, 2022, the ASW called and informed Petitioner that he would need to submit a new 54-A signed by an approved provider and that the form needed to be received within the allotted 45 days since his referral. (Exhibit A, p 14; Testimony). The ASW also mailed Petitioner a new 54-A on this date. (Exhibit A, p 6; Testimony)

4. On January 6, 2023, the Department's ASW sent Petitioner a Negative Action Notice indicating that HHS was denied for failure to return the 54-A within the "appropriate time frame". (Exhibit A, pp 4, 15; Testimony)
5. January 6, 2023 was the 39th day following Petitioner's November 28, 2022 referral. (Exhibit A, p 20; Testimony)
6. On January 10, 2023, Petitioner's primary care physician signed a new 54-A, which was submitted to the Department. (Exhibit A, p 7; Testimony)
7. When the Department received the new 54-A, a new ASW was assigned and has since completed an assessment with Petitioner. If Petitioner is approved for HHS, the HHS will be retroactive to the date Petitioner's new 54-A was signed by his primary care physician. (Exhibit A; Testimony)
8. On January 20, 2023, Petitioner's hearing request was received by the Michigan Office of Administrative Hearings and Rules. (Exhibit A, p 5)

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:

DHS-54A, MEDICAL NEEDS FORM

The DHS-54A, Medical Needs form must be signed and dated by a medical professional certifying a medical need for personal care services based on the existing medical condition, physical disability, or cognitive disability of the client. The medical professional must be an approved Medicaid provider, enrolled in CHAMPS, and hold one of the following professional licenses:

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

The DHS-54A, 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, and clarification is needed from the medical provider.
- 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 DHS-54A has a specified time frame for needed services and that time frame has elapsed.

The client is responsible for obtaining the medical certification of need, but the DHS-54A must be completed by the medical professional and not the client. The National Provider Identifier (NPI) number must be entered on the form, 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, physical disability, or cognitive disability. **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.

The date that the valid medical provider signs the DHS-54A is the medical certification date entered into MiAIMS.

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.

If the case is denied and a new referral is made within 90 days of the original certification date on the DHS-54A, there is no need to obtain a new medical needs form unless there are changes in the condition of the client.

Veteran's Administration (VA)

A DHS-54A completed by a veteran's administration medical provider, or the VA medical form 10-10M, in lieu of the DHS-54A, is acceptable.

IMPORTANT DATES

When a signed DHS-390, Adult Services Application, serves as the initial request for services, the referral date must be the date the application was received in the local office.

The date that a valid client or guardian signature is received in the local office is the application date.

The DHS-54A, Medical Needs form does not serve as the application for services. If the signature date on the DHS-54A is before the DHS-390 received date, payment for Home Help services must begin on the application date.

Do not authorize Home Help services prior to the date of the medical professional's signature on the DHS-54A.

The case opening date for a Home Help case is the latter of the DHS-390 received date and the DHS-54A medical provider signature date.

Example: The local office adult services unit receives a DHS-54A signed on 07/18/2020, but a referral for Home Help had not been received yet. The adult services staff enters a referral on MiAIMS for 7/18/2020, and either mails an application to the client or sets up a home visit and brings the application to the client. The application is returned to the office on 08/07/2020. Payment cannot begin until 08/07/2020, or later, if the caregiver was not working during this period or was not enrolled in CHAMPS; see ASM 135, Home Help Caregivers.

*Adult Services Manual (ASM) 115
September 1, 2021, pp 1-3 of 6*

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

Requirements

Home help eligibility requirements include all of the following:

- Medicaid eligibility.
- Appropriate Program Enrollment Type (PET) codes.

- 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).

*Adult Services Manual (ASM) 105
June 1, 2020, 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 ASW testified that on December 2, 2022, she called and informed Petitioner that he would need to submit a new 54-A signed by an approved Medicaid provider and that the form needed to be received within the allotted 45 days since his referral. The ASW indicated that on January 6, 2023, when she had not yet received the new 54-A, she sent Petitioner a Negative Action Notice indicating that HHS was denied for failure to return the 54-A within the “appropriate time frame”.

Petitioner testified that when he spoke to the ASW on December 2, 2022, she informed him that he had 45 days from that date to return the 54-A. Petitioner indicated that he returned the 54-A within 45 days of December 2, 2022.¹

Per policy, the ASW could not approve Petitioner for HHS without a 54-A signed by an approved Medicaid provider. Policy in ASM 110 also imposes on the Department a reasonable standard of promptness for processing HHS referrals, i.e., a decision must be made within 45 days of the referral. Here, the 45th day following the referral was January 12, 2023, but the ASW sent Petitioner a Negative Action Notice denying his application on January 6, 2023, the 39th day. This was improper. While Respondent argues that policy only requires that a decision be made within 45 days (not that the ASW must wait 45 days), this argument is without merit. Accepting Respondent’s rationale, there would be nothing to stop an ASW from sending a Negative Action Notice on day 1, or day 2, or at any time prior to the expiration of the 45 days. Clearly, that was not the intent of the policy. However, the Department’s error in this instance was harmless as Petitioner could not be approved for HHS prior to the date the new 54-A was signed by his primary care physician. As indicated, if Petitioner is approved for HHS, that approval will be retroactive to the date Petitioner’s physician signed the 54-A.

As such, Petitioner has proven by a preponderance of the evidence that the Department improperly denied his HHS application and that decision must be reversed.

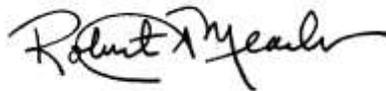
¹ Petitioner also indicated that he had an issue with the new ASW who conducted his assessment but was informed that the new referral was not the subject of the instant hearing.

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 application.

IT IS THEREFORE ORDERED THAT:

The Department's decision is REVERSED.²



RM/sj

Robert J. Meade
Administrative Law Judge

² Given that the Department's error was harmless, there is nothing for the Department to certify to comply with this Order.

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).

Via Electronic Mail:

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