[redacted]
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Date Mailed: May 18, 2023
MOAHR Docket No.: 23-002171
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 May 17, 2023. Karen Clark, Owner, American Home Care, appeared and testified on Petitioner's behalf. Petitioner also appeared. John Lambert, Appeals Review Officer, appeared on behalf of Respondent, Michigan Department of Health and Human Services (MDHHS or Department). Nokaleta Mikel, Adult Services Worker (ASW) and Kelly Williams, Adult Services Supervisor, appeared as witnesses for the Department.

ISSUE

Did the Department properly deny Petitioner's Home Help Services (HHS) application?

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 applied for HHS on [redacted] (Exhibit A, p 8; Testimony)

2. The doctor who completed the 54A Medical Needs form received with Petitioner's application did not check the Yes box in Box I to certify that Petitioner had a medical need for assistance with any of the personal care activities listed. The doctor also did not list any diagnoses for Petitioner in Box B. (Exhibit A, p 13; Testimony)

3. On March 21, 2023, based on the lack of necessary information in the 54A Medical Needs form referenced above, the ASW denied Petitioner's application for failure to meet policy requirements. (Exhibit A, p 8; Testimony)

4. On April 11, 2023, the ASW received an updated 54A Medical Needs form from Petitioner's doctor. While this form did include diagnoses for Petitioner, the doctor still did not certify Petitioner's medical need for assistance with the personal care activities listed.[1] The ASW also noted at this time that Petitioner's doctor was not an enrolled Medicaid provider, as required by policy. (Exhibit A, p 14; Testimony)

5. On April 20, 2023, Petitioner's hearing request was received by the Michigan Office of Administrative Hearings and Rules. (Exhibit A, pp 5-7)

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 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.

The Adult Services Manual (ASM) address issues of what services are included in Home Help Services and how such services are assessed:

ASM 101 AVAILABLE SERVICES

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Payment Services Home Help

Home help services are non-specialized personal care service activities provided under the home help services program to persons who meet eligibility requirements.

Home help services are provided to enable individuals with functional limitation(s), resulting from a medical or physical disability or cognitive impairment to live independently and receive care in the least restrictive, preferred settings.

Home help services are defined as those tasks which the department is paying for through Title XIX (Medicaid) funds. These services are furnished to individuals who are **not** currently residing in a hospital, nursing facility, licensed foster care home/home for the aged, intermediate care facility (ICF) for persons with developmental disabilities or institution for mental illness.

[1] The doctor did circle personal care needs in Box I, but the doctor first must check the Yes box to certify the need.

These activities **must** be certified by a Medicaid enrolled medical professional and may be provided by individuals or by private or public agencies. **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 which are eligible for Title XIX funding are limited to:

Activities of Daily Living (ADL)

- Eating.
- Toileting.
- Bathing.
- Grooming.
- Dressing.
- Transferring.
- Mobility.

Instrumental Activities of Daily Living (IADL)

- Taking medication.
- Meal preparation/cleanup.
- Shopping for food and other necessities of daily living.
- Laundry.
- Light housecleaning.

An individual must be assessed with at least one activity of daily living (ADL) ranked 3 or higher or complex care need in order to be eligible to receive home help services.

Note: If the assessment determines a need for an ADL at a level 3 or greater but these services are not paid for by the department, the individual would be eligible to receive IADL services if assessed at a level 3 or greater.

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Services not Covered by Home Help

Home help services must **not** be approved for the following:

- Supervising, monitoring, reminding, guiding, teaching or encouraging (functional assessment rank 2).

- Services provided for the benefit of others.

- Services for which a responsible relative is **able** and **available** to provide (such as house cleaning, laundry or shopping). A responsible

relative is defined as an individual's spouse or a parent of an unmarried child under age 18.

- Services provided by another resource at the same time (for example, hospitalization, MI-Choice Waiver).
- Transportation - See Bridges Administrative Manual (BAM) 825 for medical transportation policy and procedures.
- Money management such as power of attorney or representative payee.
- Home delivered meals.
- Adult or child day care.
- Recreational activities. (For example, accompanying and/or transporting to the movies, sporting events etc.)

Note: The above list is not all inclusive.

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Adult Services Manual 101
April 1, 2018, pp 1-2, 5
Emphasis added

ASM 105 ELIGIBILITY CRITERIA

GENERAL

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Requirements

Home help eligibility requirements include **all** of 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 at least one activity of daily living (ADL).

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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:

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

The DHS-54A or veterans administration medical form 10-10M are acceptable for individuals treated by a VA physician; see ASM 115, Adult Services Requirements.

Need For Service

The adult services worker (ASW) is responsible for determining the necessity and level of need for home help services based on all of the following:

- Client choice.
- A completed MDHHS-5534, Adult Services Comprehensive Assessment. An individual must be assessed with at least one activity of daily living (ADL) in order to be eligible to receive Home Help services.

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Adult Services Manual 105
June 1, 2020, pp 1, 3
Emphasis added

ASM 115 ADULT SERVICES REQUIREMENTS

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MDHHS-5534, ADULT SERVICES COMPREHENSIVE ASSESSMENT

The ASW must conduct a face-to-face interview with the client in their home to assess the personal care needs. During the assessment, complete the MDHHS-5534, Adult Services Comprehensive Assessment, generated from MiAIMS; see ASM 120, Adult Services Comprehensive Assessment.

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CLIENT AND PROVIDER CONTACTS

Within the Contacts module of MiAIMS, the following contact types are available:

- Face-to-face.
- Telephone.
- Miscellaneous.
- Email.
- Text.
- Case conference with supervisor.
- Narrative entry only.

The ASW must document all contacts between the ASW, client, provider, and collateral contacts in MiAIMS. The ASW must, at a minimum, have a face-to-face interview with the client, prior to case opening, and then every six months in the client's home for the review.

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Adult Services Manual 115
September 1, 2021, p 4

The ASW testified that Petitioner was referred for HHS on February 13, 2023, but the doctor who completed the 54A Medical Needs form received with Petitioner's application did not check the Yes box in Box I to certify that Petitioner had a medical need for assistance with any of the personal care activities listed below. The ASW noted that the doctor also did not list any diagnoses for Petitioner in Box B. The ASW testified that on March 21, 2023, based on the lack of necessary information in the 54A Medical Needs form referenced above, she denied Petitioner's application for failure to meet policy requirements. The ASW noted that on April 11, 2023, she received an updated 54A Medical Needs form from Petitioner's doctor, but while this form did include diagnoses for Petitioner, the doctor still did not certify Petitioner's medical need for assistance with the personal care activities listed. The ASW also noted at this time that Petitioner's doctor was not an enrolled Medicaid provider, as required by policy.

Petitioner's Authorized Hearing Representative (AHR) questioned why no one called Petitioner after her application was received in February 2023 regarding the missing information on the 54A Medical Needs form. Petitioner's AHR indicated that she left messages for the ASW but never received a call back. Petitioner's AHR questioned why it would take so long to get Petitioner set up for services she definitely needs. Petitioner's

AHR also noted that it would be very difficult to get a new 54A Medical Needs form by the 45-day deadline from the April 11, 2023 referral, but that they would attempt to do so.

Based on the evidence presented, Petitioner has failed to prove, by a preponderance of the evidence, that the Department erred in denying the HHS application. As indicated above, policy provides that the need for HHS ". . . **must** be certified by a Medicaid enrolled medical professional . . ." And, policy provides, "Medical needs are certified utilizing the DHS-54A, Medical Needs form and must be completed by a Medicaid enrolled medical professional." Here, Petitioner's doctor did not certify on the February 13, 2023 54A Medical Needs form that Petitioner had a medical need for the personal services listed and he did not include any diagnoses on the form, as required by policy. On the 54A Medical Needs form received on April 11, 2023, Petitioner's doctor again failed to certify a medical need for services, and it was also discovered at that time that he was not a Medicaid enrolled provider. Accordingly, the denial of Petitioner's HHS application was proper and must be upheld.

As discussed at the hearing, if Petitioner can get a new and complete 54A Medical Needs form to the Department prior to the expiration of the 45-day standard of promptness allowed for the Department to make a decision, Petitioner's HHS may be approved using the April 11, 2023 54A Medical Needs form. If a 54A Medical Needs form is received after the expiration of the 45-day period, it will be treated as a new referral for HHS.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly denied Petitioner's HHS application based on the available information.

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

RM/sj

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

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 18th day of May 2023.

S. James

S. James
Michigan Office of Administrative Hearings and Rules

Via Electronic Mail:

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