



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: May 24, 2023
MOAHR Docket No.: 23-002245
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 Petitioner's request for a hearing.

After due notice, a telephone hearing was held on May 18, 2023. Petitioner [REDACTED] (Petitioner) appeared and testified on her own behalf. [REDACTED] Petitioner's son and home help provider, also testified as a witness for Petitioner. Emily Piggott, Appeals Review Officer, represented the Respondent Department of Health and Human Services (DHHS or Department). Pearl Cowart, Adult Services Worker (ASW), and Aurelia Edwards, Adult Services Supervisor, testified as witnesses for the Department.

During the hearing, the Department submitted one exhibit/evidence packet that was admitted into the record as Exhibit A, pages 1-46. Petitioner did not submit any exhibits.

ISSUE

Did the Department properly deny Home Help Services (HHS) to Petitioner for the time period of January 1, 2023 through March 2, 2023?

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 has been approved for HHS through the Department at all times relevant to this matter. (Exhibit A, pages 6-7).
2. Petitioner's son is her home help provider. (Testimony of Petitioner).

3. On December 29, 2022, the Department sent Petitioner's son/provider written notice that his enrollment as a home help provider had been terminated due to the results of his criminal history screening. (Exhibit A, page 10).
4. His past conviction was for a crime that the Department identifies as a "permissive exclusion," and he could continue to be her provider if Petitioner chose so after being informed of the criminal offense. (Exhibit A, pages 31; Testimony of ASW).
5. On January 11, 2023, the ASW assigned to Petitioner's case at the time spoke with Petitioner over the telephone and apprised her of the issue with her provider. (Exhibit A, page 13; Testimony of Petitioner).
6. During that conversation, Petitioner stated that she wanted her son to continue to be her home help provider. (Testimony of Petitioner).
7. Petitioner also subsequently sent in a signed Personal Choice and Acknowledgement of Provider Selection form stating that she wished to retain her son as her home help provider. (Testimony of Petitioner; Testimony of ASW).
8. However, the form was not date stamped when received by the Department. (Testimony of Petitioner; Testimony of ASW).
9. Petitioner's ASW at the time also resigned in January of 2023, and the form Petitioner sent in was either left on her desk when she resigned or placed on there afterward. (Testimony of ASW).
10. On February 2, 2023, the Department issued a warrant as payment for HHS provided in December of 2022. (Exhibit A, page 15).
11. No warrants were issued for services provided in January or February of 2023. (Exhibit A, pages 15-16; Testimony of ASW).
12. Given the lack of payments, Petitioner and her provider contacted the Department. (Testimony of Petitioner; Testimony of Petitioner's provider).
13. A new ASW was assigned to Petitioner's case, and she spoke with Petitioner on March 3, 2023. (Exhibit A, page 20; Testimony of Petitioner; Testimony of ASW).
14. During that conversation, Petitioner again stated that she wanted her son to continue to be her home help provider. (Testimony of Petitioner).
15. She also subsequently forwarded another signed Personal Choice and Acknowledgement of Provider Selection form stating that she wished to retain her son as her home help provider. (Exhibit A, page 21).

16. Given Petitioner's verbal attestation on March 3, 2023, the Department reauthorized HHS with Petitioner's son as her provider as of that date. (Testimony of ASW; Testimony of Adult Services Supervisor).
17. Petitioner and her provider then requested that the Department pay Petitioner's provider for the services he provided between January 1, 2023 and March 2, 2023. (Testimony of Petitioner; Testimony of Petitioner's provider; Testimony of ASW).
18. The Department denied that request. (Testimony of Petitioner; Testimony of Petitioner's provider; Testimony of ASW).
19. On April 25, 2023 the Michigan Office of Administrative Hearings and Rules (MOAHR) received the request for hearing filed in this matter with respect to that denial. (Exhibit A, page 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 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.

Regarding the enrollment of providers and the authorization of payments for HHS, Adult Services Manual (ASM) 135 (4-1-2022), states in part that:

The client has the right to choose his or her Home Help caregiver(s). The client is the employer and may terminate the caregiver's employment at any time. Home Help services are a benefit to the client and earnings for the caregiver.

* * *

Individuals who wish to provide personal care services through the Medicaid Home Help program must undergo a criminal history screen during the enrollment process in CHAMPS. The screening must be completed and passed by the MDHHS Provider Enrollment unit before payment can be authorized.

Individuals with certain excludable convictions may not be approved to provide Home Help. Excludable convictions fall into two general categories. Mandatory exclusions are those set forth in the Social Security Act (42 USC 1320a-7[a]). Permissive exclusions are felony convictions identified but not limited to the crimes listed in MSA Bulletin 19-03, Provider Enrollment Fitness Criteria.

* * *

Permissive Exclusions

Permissive exclusions are felony convictions beyond the four mandatory exclusions. Individual caregivers are denied enrollment based on permissive exclusions identified in MSA Bulletin 19-03 unless the client signs an MSA-119, Personal Choice and Acknowledgement of Provider Selection, form stating he or she wishes to retain the individual caregiver. As of April 1, 2019; Provider Enrollment will complete a 10-year look back on federal or state felonies at the time of caregiver enrollment and a 5-year look back for federal or state misdemeanors at the time of caregiver enrollment.

Acknowledgement of Provider Selection

A client may choose to select a caregiver who has been determined ineligible because of a permissive exclusion identified through the criminal history screening process. The client must sign an MSA-119, Personal Choice and Acknowledgement of Provider Selection, form to hire an individual caregiver with a permissive exclusion.

The client's signature acknowledges he or she has been informed of the criminal offense and continues to choose the individual to provide services. The effective start date for the selected individual caregiver is the date the client signs the acknowledgement form. The ASW must not authorize payment prior to the signature date on the acknowledgment form.

Note: Effective April 1, 2019, MSA Bulletin 19-03 states, "Personal choice selections are subject to the following restrictions: The provider is not legally responsible for the beneficiary". This means that guardians with a permissive exclusion can no longer sign the MSA-119, Personal Choice and Acknowledgement of Provider Selection form, on behalf

of the client to be the client's caregiver. In these situations, the client will need to seek another caregiver or a change in guardian will need to occur.

Note: If an individual caregiver with a permissive exclusion desires to work for multiple clients, an MSA-119, Personal Choice and Acknowledgement of Provider Selection, form must be signed by **each** client. The approved date of payment is based on the date the client signed the acknowledgement form.

The MSA-119, Personal Choice and Acknowledgement of Provider Selection, form cannot be applied to the federally mandated exclusions or to any caregiver who is working for an agency.

ASM 135, pages 1, 8-10

Here, as discussed above, Petitioner has continuously been approved for HHS at all times relevant to this case and has requested a hearing with respect to the time period of January 1, 2023, to March 2, 2023, during which the Department has denied HHS payments.

In support of that decision, the ASW testified that payments stopped after the Department conducted a criminal history screening of Petitioner's provider and discovered that he has a past conviction of a crime that met the criteria for a permissive exclusion. She also testified that the payments resumed after she was assigned to the case; she spoke with Petitioner; Petitioner verbally attested that, even being aware her son's conviction, she wanted her son to continue to be her home help provider; and the Department subsequently received a signed Personal Choice and Acknowledgement of Provider Selection form.

The ASW also testified that; while another ASW was previously assigned to Petitioner's case, the Department received a signed Personal Choice and Acknowledgement of Provider Selection form; that ASW had resigned; and the new ASW discovered the form when checking the previous ASW's desk. She further testified that the Department could not resume payments pursuant to that acknowledgement form because it was not date stamped when received by the Department and the Department could not determine when it received the form.

The Adult Services Supervisor testified that the previous ASW left the Department in January of 2023 and that it is the Department's duty to date stamp any documents received from clients. She also testified that verbal attestations of provider selections are permitted pursuant to emergency orders issued during the COVID-19 pandemic. She further testified that she never reviewed the first Personal Choice and

Acknowledgement of Provider Selection form, but that she believed there was an issue with it.

In response, Petitioner testified that she spoke with the previous ASW in January of 2023 and stated over the telephone that she was aware of her son's conviction and still wanted him to remain as her provider. She also testified that she sent in a signed written form as well, and tried to fill it out as best as she could.

Petitioner's son/provider testified that they made multiple attempts to contact the previous ASW before learning that she had resigned. He also testified that paperwork was timely submitted after they spoke to the new ASW, and that everything would have resolved earlier if they had been notified of any issue. He further testified that he rendered services in January and February of 2023.

Petitioner bears the burden of proving by a preponderance of the evidence that the Department erred in denying Petitioner's request for HHS during the time period of January 1, 2023 through March 2, 2023.

Given the record in this case, Petitioner has met that burden of proof and the Department's decision should be reversed.

Per the above policy, HHS payments cannot be authorized when the home help provider has a past conviction that meets the criteria for permissive exclusion until the client signs a Personal Choice and Acknowledgement of Provider Selection form. In that form, the client's signature acknowledges he or she has been informed of the criminal offense and continues to choose the individual to provide services; with the effective start date for the selected individual caregiver to be the date the client signs the acknowledgement form.

Moreover, while the policy states that the personal choice and acknowledgement of provider selection must be submitted in writing; both the ASW and the Adult Services Supervisor who testified as witnesses in this case stated that, due to the COVID-19 pandemic, the Department now makes exceptions to the applicable policy and the start date for the selected individual caregiver can be the date the client verbally attests that he or she has been informed of the criminal offense and continues to choose the individual to provide services.

Given that exception, Petitioner's services; with her son as her provider, should have restarted as of January 11, 2023, as that was the date Petitioner verbally attested that she was aware of her son's conviction and still wanted him to continue as her home help provider. While the previous ASW's notes only reflect that she spoke with Petitioner on that day about making a provider selection, that ASW did not testify during the hearing while Petitioner credibly testified that she made her choice and verbal attestation as soon as she was contacted by the Department about the issue with her son/provider.

Additionally, even if Petitioner did not make a verbal attestation on January 11, 2023, her services; with her son as her provider, still should have restarted prior to March 3, 2023, as it is undisputed that she submitted a signed Personal Choice and Acknowledgement of Provider Selection form prior to that date. And, while the Department did not date-stamp that document when it received it, the Department's error and the lack of a date stamp is irrelevant as the applicable policy states that the effective start date for the selected individual caregiver is to be the date the client signs the acknowledgement form, and not when the Department receives it.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department erred when denying Petitioner's request for HHS for the time period of January 1, 2023 through March 2, 2023.

IT IS, THEREFORE, ORDERED that:

The Department's decision is **REVERSED**, and it must initiate a reassessment of Petitioner's request and make payments for services Petitioner is otherwise entitled to.

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).

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 24th day of May 2023.

S. James

S. James
**Michigan Office of Administrative
Hearings and Rules**

Via Electronic Mail:

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