



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
SUZANNE SONNEBORN
EXECUTIVE DIRECTOR

MARLON I. BROWN, DPA
DIRECTOR

Date Mailed: March 7, 2024
MOAHR Docket No.: 24-000324
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 hearing.

After due notice, a telephone hearing was held on February 15, 2024. Petitioner [REDACTED] (Petitioner) appeared and testified on her own behalf. John Lambert, Appeals Review Officer, appeared and testified on behalf of the Respondent Department of Health and Human Services (DHHS or Department). Rebecca Fockler, Adult Services Worker (ASW) testified as a witness for the Department.

At the onset of the hearing, the Department moved for dismissal on the basis that Petitioner had already appealed the suspension of services at issue in this case, she failed to appear for the hearing scheduled on that issue, and the matter was dismissed.

However, that previous case was based on the initial notice of adverse benefit determination sent to Petitioner and, even though it did not have to, the Department subsequently sent a second notice of adverse benefit determination regarding the suspension of Petitioner's services. That second notice also informed Petitioner of her right to request an administrative hearing, and Petitioner timely did so.

Accordingly, Petitioner's request was properly filed in this case; the Department's motion to dismiss was denied, and the matter proceeded to hearing.

During the hearing, the Department offered one evidence packet/exhibit that was admitted into the record as Exhibit A, pages 1-49. Petitioner did not offer any exhibits.

ISSUE

Did the Department properly suspend Petitioner's 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 approved for HHS through the Department in January of 2017. (Exhibit A, pages 9, 11).
2. On June 27, 2023, during a required six-month review of Petitioner's services, the ASW requested that Petitioner provide a new or updated DHS-54A Medical Needs form by September 11, 2023. (Exhibit A, page 14).
3. The ASW also subsequently sent Petitioner a copy of the form to be completed by Petitioner's medical provider. (Exhibit A, page 22).
4. Petitioner did not provide a new Medical Needs form by the requested date. (Testimony of Petitioner; Testimony of ASW).
5. On October 9, 2023, the Department sent Petitioner written notice that her HHS would be suspended as of October 23, 2023, if she did not provide a new Medical Needs form. (Exhibit A, page 15).
6. Petitioner did not provide a new Medical Needs form by the effective date identified in that notice. (Testimony of Petitioner; Testimony of ASW).
7. The Department did not implement the suspension; however, and on October 23, 2023, the Department instead sent Petitioner written notice that her HHS would be suspended as of November 6, 2023, if she did not provide a new Medical Needs form. (Exhibit A, page 16).
8. Petitioner did not provide a new Medical Needs form by the effective date identified in that notice. (Testimony of Petitioner; Testimony of ASW).
9. Petitioner did request an administrative hearing with the Michigan Office of Administrative Hearings and Rules (MOAHR) with respect to the notice of suspension. (Exhibit A, page 45).
10. MOAHR docketed her case as 23-007207, and it scheduled a hearing for November 29, 2023. (Exhibit A, page 46).
11. Petitioner failed to appear for the scheduled hearing on November 29, 2023, and Docket No. 23-007207 was dismissed. (Exhibit A, page 46).

12. The Department did not implement the suspension; however, and the ASW continued to work with Petitioner. (Testimony of Petitioner; Testimony of ASW).
13. On December 27, 2023, the ASW completed a home visit with Petitioner, during which Petitioner reported that she does not have a new Medical Needs form and had not yet made an appointment with her doctor. (Exhibit A, page 19).
14. On December 29, 2023, the Department sent Petitioner written notice that her HHS would be suspended, with an effective date of November 6, 2023, until a new Medical Needs form was received. (Exhibit A, page 19).
15. On January 17, 2024, the Michigan Office of Administrative Hearings and Rules (MOAHR) received the request for hearing filed in this matter regarding the suspension of Petitioner's HHS. (Exhibit A, pages 7-8).

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).

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:

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

Either 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.

ASM 105, page 3

Additionally, with respect to the required medical needs form, ASM 115 (5-1-2023) further states in part:

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.

ASM 115, pages 1-3

Here, the Department suspended Petitioner's HHS pursuant to the above policies and on the basis that Petitioner failed to provide an updated Medical Needs form as required.

In appealing that decision, Petitioner bears the burden of proving by a preponderance of the evidence that the Department erred in suspending her HHS.

Given the record 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 policies, a certification of medical need by a qualified medical provider is required for HHS to be approved; and, while the form need not be updated routinely, a new form is required to maintain HHS when an ASW assesses an improvement in a client's ability for self-care, resulting in a possible decrease or elimination of services, while the client states their care needs have not changed.

Here, the ASW testified that she requested an updated Medical Needs form given Petitioner's consistent presentation and apparent improvement in health, with Petitioner not having an active medical provider, which led to questions about whether she still needed HHS. Petitioner herself did not dispute the need for an updated Medical Needs form during the hearing, and the undersigned Administrative Law Judge finds that the Department properly requested and required an updated Medical Needs form from Petitioner given the record.

Moreover, the record also demonstrates that the Department gave Petitioner ample time to obtain an updated Medical Needs form before suspending her services. The required form was first requested on June 27, 2023, while the Department did not take action on the suspension until December 29, 2023, over six months later. The Department also sent Petitioner two written notices and conducted another home visit during that period, with Petitioner still failing to send in the updated form.

Petitioner testified during the hearing that she now has a new doctor; and while she missed one appointment, she is working on getting the Medical Needs form completed. If she does so, and the doctor certifies her medical need for assistance, the suspension will be lifted, and her HHS may be reinstated. With respect to the suspension at issue in this case, however, the Department's decision must be affirmed given the available information and applicable policy.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly suspended Petitioner's HHS.

IT IS THEREFORE ORDERED that:

The Department's decision is **AFFIRMED**.

Steven Kibit

SK/pe

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

Via Electronic Mail:

Agency Representative

John Lambert
Michigan Department of Health and Human Services
MDHHS Appeals Section
Lansing, MI 48909
LambertJ4@michigan.gov

DHHS

Kael Meyer
Lake County DHHS
5653 South M-37
Baldwin, MI 49304
MDHHS-Lake-Hearings@michigan.gov

DHHS Department Contact

Michelle Martin
MDHHS
400 S. Pine St., 6th Floor
Lansing, MI 48933
MDHHS-Home-Help-Policy@michigan.gov

DHHS Department Representative

Mary Carrier
MDHHS Appeals Section
P.O. Box 30807
Lansing, MI 48909
MDHHS-Appeals@michigan.gov

Via First Class Mail:

Petitioner

[REDACTED]

[REDACTED] MI [REDACTED]