

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 373-4147

IN THE MATTER OF:

Docket No. 2013-47440 HHS

██████████,

██████████

Appellant

_____ /

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 the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████ ██████████ ██████████ Attorney, appeared on the Appellant's behalf. ██████████ father and Guardian, and ██████████ ██████████, mother, appeared as witnesses for the Appellant. ██████████ Appeals Review Officer, represented the Department. ██████████ Adult Services Worker (ASW), appeared as a witness for the Department.

ISSUE

Did the Department properly increase the Appellant's Home Help Services (HHS) payments?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. The Appellant is a ██████████-year-old Medicaid beneficiary.
2. A hearing was held on ██████████ ██████████ regarding an ██████████ Advance Negative Action Notice reducing the Appellant's HHS authorization effective ██████████. During the hearing proceedings,

¹ The Appellant's HHS case was held in conjunction with 2013-47443 HHS, 2013-47434 HHS, and 2013-47438 HHS. The Appellants in those three cases are Appellant's brothers and parties agreed to incorporate the hearing records for all four cases by reference as the appeals all involved the same type of action. The Appellant has two additional brothers that also receive HHS. However, no actions were taken on those two brothers HHS cases for the present appeal.

² On ██████████, the Appellant's HHS case was also held in conjunction with his five brother's HHS cases as the appeals also involved related issues. The parties reached an agreement during the first of the scheduled hearings, docket number 2013-4614 HHS.

the parties reached an agreement. The RN with the MDCH HHS program agreed to make a make a visit to the Appellants' home to re-assess these cases for the ongoing HHS authorizations. This in-person re-assessment was to occur within [REDACTED] days of the [REDACTED] hearing date. Further, the Appellant's HHS payments were to be adjusted to the HHS hours that had been recommended by the MDCH RN retroactive to the [REDACTED] effective date listed on the [REDACTED] Advance Negative Action Notices. (Exhibit 2, pages 6-7)

3. On [REDACTED], the Department sent the Appellant a Services and Payment Approval Notice indicating his HHS case would be increased to [REDACTED] per month effective [REDACTED]. The notice indicated that the HHS hours for dressing and transferring were increased. (Exhibit 2, page 8)
4. The Appellant's HHS payment authorization history shows the increase to [REDACTED] was made effective [REDACTED]. (Exhibit 2, page 18)
5. The MDCH RN completed the home visit in [REDACTED] but no notice of the determination had been issued as of the [REDACTED] hearing date. (Uncontested)
6. On [REDACTED], the Appellant's request for hearing was received by the Michigan Administrative Hearing System. (Exhibit 2, page 4)

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) 150, addresses notification of eligibility determinations:

Written Notification of Disposition

All notifications are documented under ASCAP contacts when they are generated. This documentation acts as the file copy for the case record. For this purpose, the form letters used are:

- DHS-1210, Services Approval Notice.
- DHS-1212A, Adequate Negative Action Notice.
- DHS-1212, Advance Negative Action Notice.

Each notification letter includes an explanation of the procedures for requesting an administrative hearing.

The adult services specialist **must sign** the bottom of the second page of all notices (DHS-1210, DHS-1212A, DHS-1212) before they are mailed to the client.

Services Approval Notice (DHS-1210)

Notification Services Have Been Approved

If independent living services (non-payment services) or adult community placement services are approved, the DHS-1210, Services Approval Notice, is sent indicating what services have been authorized.

If home help services will be authorized, note the amount and the payment effective date. Print and attach a copy of the Time and Task worksheet. The DHS-1210 is completed and generated through the Adult Service Comprehensive Assessment Program (ASCAP).

Notification Services Have Been Increased

The DHS-1210 must also be used when there is an increase in the amount of home help services on an open case. Appropriate notations must be entered in the comment section. A copy of the Time and Task worksheet must be printed and sent with the notice.

Advance Negative Action Notice (DHS-1212)

The DHS-1212, Advance Negative Action Notice, is used and generated on ASCAP when there is a reduction, suspension or termination of services. Appropriate notations must be entered in the comment section to explain the reason for the negative action.

- Reduced - decrease in payment.
- Suspended - payments stopped but case remains open.

- Terminated - case closure.

Negative Actions Requiring Ten Day Notice

The effective date of the negative action is ten business days **after** the date the notice is mailed to the client. The effective date must be entered on the negative action notice.

*Adult Services Manual (ASM) 150, 11-1-2011,
Pages 1- 2 of 4.*

On ██████████ ██████████, the Department sent the Appellant Services and Payment Approval Notice indicating his HHS case would be increased to ██████████ per month effective ██████████. The notice indicated that the HHS hours for dressing and transferring were increased. (Exhibit 2, page 8) The Appellant's HHS payment authorization history shows the increase to ██████████ was made effective ██████████ (Exhibit 2, page 18) The ASW testified the action was based on the settlement the parties had reached during the ██████████ hearing proceedings. (ASW Testimony)

The action at issue for the ██████████ hearing was an ██████████ Advance Negative Action Notice reducing the Appellant's HHS authorization effective ██████████. During the hearing proceedings, the parties reached an agreement. The RN with the MDCH HHS program agreed to make a make a visit to the Appellants' home to re-assess these cases for the ongoing HHS authorizations. This in-person re-assessment was to occur within ██████████ days of the ██████████ hearing date. Further, the Appellant's HHS payments were to be adjusted to the HHS hours that had been recommended by the MDCH RN retroactive to the ██████████ effective date listed on the ██████████ Advance Negative Action Notices. (Exhibit 2, pages 6-7)

This ALJ has compared the MDCH RN's recommendations with the Time and Task authorization for the Appellant's HHS case. (Exhibit 2, pages 13-16) With the exception of suctioning, the ASW authorized HHS hours for the Appellant in accordance with the MDCH RN's recommendations as the parties agreed to during the ██████████ hearing proceedings. It appears the HHS hours for suctioning were inadvertently omitted from the Appellant's HHS authorization. Further, the ASW acknowledged that the effective date was an error and should have been ██████████ in accordance with the agreement the parties reached during the ██████████ hearing proceedings. (ASW Testimony)

The MDCH RN completed the home visit in ██████████ but no notice of the determination had been issued as of the ██████████ hearing date. (Uncontested) The Department asserts the results and recommendations from this assessment are still pending. (Exhibit 2, page 2) As discussed during the hearing proceedings, there is no jurisdiction to review the MDCH RN's ██████████ assessment at this time because no

action has been taken yet. However, the Department must issue a written notice of the determination from the MDCH RN's assessment indicating if the ongoing HHS authorization for the Appellant will be an increase, decrease or remain the same. If the Appellant disagrees with the determination, a Request for Hearing can be filed to contest the action.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department improperly increased the Appellant's HHS authorization by failing to include the HHS hours for suctioning and further failing to make the increase retroactive to [REDACTED] in accordance with the agreement the parties reached during the [REDACTED] hearing proceedings.

IT IS THEREFORE ORDERED THAT:

The Department's decision is REVERSED. The Department must initiate adding the HHS hours for suctioning recommended by the MDCH RN to the Appellant's HHS authorization and making the entire increase to the Appellant's HHS authorization effective retroactive to [REDACTED]

/s/

Colleen Lack
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

Date Signed: [REDACTED]
Date Mailed: [REDACTED]

CL/db

cc: [REDACTED]

***** NOTICE *****

The Michigan Administrative Hearing System may order a rehearing on either its own motion or at the request of a party within 30 days of the mailing date of this Decision and Order. The Michigan Administrative Hearing System will not order a rehearing on the Department's motion where the final decision or rehearing cannot be implemented within 90 days of the filing of the original request. The Appellant may appeal the Decision and Order to Circuit Court within 30 days of the receipt of the Decision and Order or, if a timely request for rehearing was made, within 30 days of the receipt of the rehearing decision.