

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

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IN THE MATTER OF:

██████████,

Appellant.

Docket No. 2014-35869 HHS
Case No. ██████████

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 the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. Appearing on behalf of the Appellant and offering testimony was ██████████. ██████████, Appeals Review Officer, represented the Department of Community Health. ██████████, Adult Services Worker (ASW) and ██████████, Adult Services Manager (ASM) appeared as witnesses for the Department.

ISSUE

Did the Department properly stop 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. As of ██████████, the Appellant was approved for and receiving HHS payments. (Testimony)
2. As of ██████████, an annual redetermination was due. (Testimony)
3. Prior to ██████████, the Department did not send the Appellant any notification regarding the annual redetermination. (Testimony)
4. On ██████████, the Department suspended the Appellant's HHS payments and left the Appellant's HHS case open. The Department did not provide any notice to the Appellant regarding the suspension of HHS payments. (Exhibit A, p. 18; Testimony)

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5. On [REDACTED] or [REDACTED], the ASW went to the Appellant's home for the annual redetermination. The ASW determined the home was uninhabited and left without conducting the redetermination. (Testimony)
6. On [REDACTED], the ASW sent the Appellant an Advance Negative Action notice. The notice indicated the Appellant's HHS case was being terminated effective [REDACTED] as the Appellant's whereabouts were unknown. (Exhibit A, p. 6; Testimony)
7. On [REDACTED], the Appellant requested a hearing due to the HHS payments stopping at the end of [REDACTED]. (Exhibit A, pp. 4, 5; Testimony)
8. Prior to [REDACTED] but after [REDACTED], the ASW was in contact with the Appellant and the Appellant's Provider and the annual redetermination was conducted. (Testimony)
9. On [REDACTED], the ASW presented the Appellant's case file to the ASM to have retroactive payments back to [REDACTED] authorized. (Testimony)
10. On [REDACTED], the ASM in reviewing the Appellant's case file and authorization request determined there was a possible over issuance due to a duplication of services. (Testimony)

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 Administrative Code, and the State Plan under Title XIX of the Social Security Act Medical Assistance Program.

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.

ASM 150 (5-1-2013) addresses the issue of 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.

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

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.

ASM 140 (5-1-13) addresses payment authorizations:

The Adult Services Authorized Payments (ASAP) is the Michigan Department of Community Health payment system that processes adult services authorizations. The adult services specialist enters the payment authorizations using the **Payments** module of the **ASCAP** system.

- Home help services payments to providers must be:
- Authorized for a specific period of time and payment amount. The task is determined by the comprehensive assessment in ASCAP and will automatically include tasks that are a level three or higher.
- Authorized **only** to the person or agency actually providing the hands-on services.
- Made payable jointly to the client and the provider.
- Prorate the authorization if the MA eligibility period is less than the full month.
- Do not authorize payments to a responsible relative.
- Do not authorize a home help payment if there is not a MSA-4678 on file with the Michigan Department of Community Health; see ASM 135, Home Help Providers.

Authorizations on a closed case for a time period when the case was open can be made with supervisor approval as long as the provider was assigned to the case.

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In this case, the Department stopped issuing payments to the Appellant when the annual redetermination was not performed. At the time payments stopped, the Appellant's case remained open.

The ASM argued that this type of action (payments stopping; case remaining open) did not require any notice to the Appellant. The ASM however was unable to provide any policy to support her argument.

The aforementioned facts meet the suspended definition found in ASM 150 and in light of the ASM failing to provide any policy to support her claim; I therefore find that the stopping of payments while the case remained open required an Advance Negative Action notice to be issued to the Appellant.

Because, the Department failed to provide the Appellant of any notice of the payments stopping, the Department did not act in accordance with policy in stopping the payments and therefore, their actions must be reversed.

The second claim by the Department was that retroactive payments could not be made as the amount of payment was now in question and per policy, the payments could not be authorized by the ASM if they thought the payments were in appropriate.

Again, the ASM did not provide any policy to justify the actions of the Department. Additionally, the above policy on payment authorizations allows for retroactive payments to be made in scenarios like this one. Moreover, the ASM had concerns about a possible over issuance and then recoupment. There are policies in place to collect on over issuances and recoup over paid benefits. Specifically, the ASM indicated payments could not be authorized as there was a possible over issuance.

Specifically, ASM 165 (5-1-2013) addresses overpayments and the recoupment process:

ASM 165 identifies an overpayment as a situation where **payments are made** in an amount greater than allowed under department policy. ASM 165 continues by stating corrective actions must be taken to prevent further overpayment and to recoup the overpayment amount when the overpayment is discovered.

Because an overpayment doesn't occur until after the payments are actually made, there is no overpayment until the payments have been made. Therefore in this case, there has not been an overpayment made (even if the ASM determines that there was a prior duplication of services) as payments were never issued. Only after the payments have been issued can they then be treated as an over issuance.

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Based upon the facts presented and the policy both researched and identified, I find the Department erred in stopping payments without proper notification and therefore order the Department to issue retroactive benefits back to [REDACTED] in the amount that was previously authorized in ASCAP.

DECISION AND ORDER

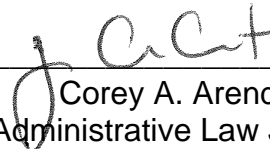
The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department improperly suspended the Appellant's HHS payments.

IT IS THEREFORE ORDERED THAT:

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

The Department is ordered to:

1. Issue retroactive HHS payments to the Appellant at the previously authorized amount dating back to [REDACTED].



Corey A. Arendt
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

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***** 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.