

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

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IN THE MATTER OF:

██████████,

Appellant.

Docket No. 2014-7301 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 ██████████. The Appellant appeared and offered testimony. ██████████, Appeals Review Officer, represented the Department of Community Health. ██████████ and ██████████, Adult Services Workers (ASW) appeared as witnesses for the Department.

ISSUE

Did the Department properly terminate the Appellant's Home Help Services (HHS) on ██████████?

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 receiving HHS. (Exhibit A, p. 14; Testimony)
2. On ██████████, the Appellant met with ██████████. The Appellant told ██████████ she was now married. (Exhibit A, p. 13; Testimony)
3. On ██████████, ██████████ entered a narrative documenting her meeting with the Appellant. In the narrative, ██████████ indicated she was stopping payments on the Appellants case and mailing out an Advance Negative Action notice that same day.
4. On ██████████, the Department stopped the Appellant's HHS payments. (Exhibit A, p. 14; Testimony)
5. On ██████████, the Department sent the Appellant an Advance Negative Action notice. The notice indicated the Appellant's HHS

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payments were being stopped effective [REDACTED].

6. On [REDACTED], the Department closed the Appellant's HHS case. (Exhibit A, p. 9; Testimony)
7. On [REDACTED], the Appellant requested HHS services. (Exhibit A, p. 16; Testimony)
8. On [REDACTED], the Appellant requested a hearing regarding the [REDACTED] HHS application. (Exhibit 1, p. 1)

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.

Home Help Services 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) 101 (12-1-2013) addresses the issue of available services:

Program Description

Independent living services offer a range of payment and nonpayment related services to individuals who require advice or assistance to support effective functioning within their home or the household of another.

Payment Services Home Help

Home help services are non-specialized personal care service activities provided under the independent living 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.

Services not Covered by Home Help

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

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- 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.

ASM 101, 12-1-2013, pp. 1, 2, 4, 5.

ASM 170 (5-1-2013) addresses the issue of case closures:

Notification of the Negative Action

When home help services are terminated, suspended or reduced for **any** reason, a DHS-1212, Advance Negative Action Notice, must be generated in **ASCAP** and sent to the client advising of the negative action and explaining the reason for the action; see ASM 150, Notification of Eligibility to determine need for 10 business day notice of action.

ASM 170, 5-1-2013, pp. 1, 2.

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.

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.

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.

Negative Actions Not Requiring Ten Day Notice

The following situations **do not** require the ten business day notice on negative actions:

- The department has factual confirmation of the death of the client (negative action notice must be mailed to the guardian or individual acting on the client's behalf) or death of the service provider.

Note: Cases should remain open until all appropriate payments have been issued.

- The department receives a verbal or written statement from the client, stating they no longer want or require services, or that they want services reduced.

Note: This information must be clearly documented in the general narrative of ASCAP. Written notices must be maintained in the paper case file and documented in the general narrative.

- The department receives a verbal or written statement from the client that contains information requiring a negative action. The statement must acknowledge the client is aware the negative action is required and they understand the action will occur.

Example: A home help services client informs the specialist that they are engaged and will be married on a specific date. They also acknowledge that their new spouse will be responsible for meeting their personal care needs and they will no longer qualify for home help services.

Note: This information must be clearly documented in the general narrative of ASCAP. Written notices must be maintained in the paper case file and documented in the general narrative.

ASM 150, 5-1-2013, pp. 1-4.

ASM 170 (5-1-2013) addresses the issue of notification of reopening a services case:

Reopening a Services Case

If a case has closed and reopens within 90 days, a new DHS-390, Services Application and DHS-54A, Medical Needs form are **not** required.

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On [REDACTED], the Appellant notified the Department that she was now married. There is no documentation or evidence to reflect that the Appellant at the time of admission understood the marriage would result in a negative action. Immediately after the admission, the worker on the case entered a closure in the ASCAP system without generating a notice. The negative action took place on [REDACTED] with a negative action notice being sent on [REDACTED]. The negative action notice reflected an action date of [REDACTED].

The Department in this case did not provide any evidence to explain the sequence of events regarding the negative action. The worker on the case indicated she had delayed the sending of the negative action to provide the Appellant with time to get in touch with her. This argument however does not address what transpired and is in direct conflict with the controlling policy. Policy specifically requires in situations like this to provide an advance negative action notice prior to the negative action taking place.

The notice is to provide the Appellant with an opportunity to appeal the negative action as well as put the Appellant on notice of any pending negative actions. Without the notice, the Appellant is in the dark and does not have the ability to rectify/address any pending action.

Additionally, after the closure of the case, the Appellant had made a request for HHS. The request occurred within 90 days of the case closure. Because the request occurred within 90 days of the case closure, the Appellant is not required to submit a new application or a new 54A.

Therefore, based on the evidence presented, I find, the Department improperly reduced the Appellant's HHS as policy requires a negative action notice to accompany the corresponding negative action. This was not done until weeks after the negative action.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED THAT:

1. The Department's decision is **REVERSED**.
2. The Department is ordered to reopen the Appellant's HHS case with an effective date of [REDACTED].

ls

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

[REDACTED]
cc: [REDACTED]

Date Signed: December 11, 2013

Date Mailed: December 11, 2013

***** 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.