

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

P.O. Box 30763, Lansing, MI 48909
(517) 335-2484; Fax: (517) 373-4147

IN THE MATTER OF:

██████████

Appellant.

_____ /

Docket No. 15-000967 HHS

██████████

██████████

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 telephone hearing was held on ██████████. Appellant appeared and testified on her own behalf. ██████████, Appellant's grand-daughter and home help provider, also testified as a witness for Appellant. ██████████, Appeals Review Officer, represented the Department of Community Health (DCH or Department). ██████████, Adult Services Supervisor with the ██████████ County Department of Human Services (DHS), testified as a witness for the Department.

ISSUE

Did the Department properly suspend Appellant'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. Appellant is a ██████ year-old Medicaid beneficiary who has been diagnosed with diabetes, osteoarthritis, hyperlipidemia, and high blood pressure. (Exhibit A, pages 6, 8).
2. Appellant had been receiving HHS through the Department since ██████████, and was most recently approved for HHS in the amount of ██████ hours and ██████ minutes per month, with a total monthly care cost of ██████████. (Exhibit A, pages 7, 10).
3. During the time she has received HHS, Appellant and her provider have always timely submitted provider logs regarding the HHS being provided. (Testimony of Appellant; Testimony of ██████████).

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4. On ██████████, the Department sent Appellant written notice that her HHS would be suspended on ██████████ because “[n]o further payments can be authorized until past due provider logs are returned.” (Exhibit A, page 5).
5. Along with the notice of suspension, the Department also sent Appellant new copies of the purportedly missing provider logs for the time period of ██████████ to ██████████. (Exhibit A, page 12).
6. Even though they had already sent the provider logs in before, Appellant and her provider completed the logs again and sent them in to the local DHS office. (Testimony of Appellant; Testimony of ██████████).
7. The local DHS office received the completed logs on ██████████ (Exhibit A, page 13; Testimony of ██████████).
8. However, despite the fact that the completed logs were received prior to the effective date of the suspension, the suspension still took effect. (Testimony of ██████████).
9. On ██████████, the Michigan Administrative Hearing System (MAHS) received the request for hearing filed in this matter. (Exhibit A, page 4).
10. Appellant’s HHS payments have remained suspended while this appeal was pending. (Testimony of ██████████).

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.

As discussed above, the Department suspended payments for HHS in this case because of past due provider logs. With respect to provider logs, Adult Services Manual 135 (12-1-2013), pages 4-5 of 9, states:

**PERSONAL CARE SERVICES PROVIDER LOG
(DHS-721)**

- Each individual provider must keep a log of home help services delivered. The DHS- 721 is used for this purpose.
- Tasks on the provider logs are automatically marked with an X when printed from ASCAP based on the client's home help functional assessment.
- The provider must indicate what services were provided and on which days of the month.
- The client and the provider must sign the log when it is completed to verify that the services approved for payment were delivered.
- The log must be submitted to the local office quarterly. Provider logs must be received within 10 business days after the last service date on the log. Failure to do so will result in suspension of payment.
- The adult services specialist must initial and date the log upon receipt, demonstrating review of the log.
- Retain the log in the client's case record.
- A separate log is required for each provider. Incomplete logs must be returned to the client/provider for completion.

Agency/business providers have the option of submitting monthly invoices in lieu of the DHS-721, Provider Log. Each invoice must specify the following:

- The service (s) provided, and
- The date(s) of service.

See ASM 136, Agency Providers.

Here, the Department's witness testified that the Central Office in Lansing conducted a review of clients' provider logs and, after finding that logs were missing in this case for

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██████████ sent a negative action notice stating that Appellant's HHS payments would be suspended until the past due provider logs were returned. The Department's witness also testified that he had no personal knowledge of if and when the logs were provided, but that the Department's own exhibit suggested that the past due logs were returned on ██████████, which was prior to the effective date identified in the negative action notice. According to the Department's witness however, while the logs have been returned, payments cannot resume until the Adult Services Worker completes the annual redetermination, which is not scheduled to occur until ██████████.

In response, Appellant and her home help provider testified that they have always timely submitted the provider logs and, after receiving the notice of suspension in this case, they promptly resubmitted the logs for ██████████.

Appellant bears the burden of proving by a preponderance of the evidence that the Department erred in suspending her HHS and, given the record in this case, the undersigned Administrative Law Judge finds both that Appellant has met that burden of proof and that the Department's decision must be reversed.

Appellant and her home help provider, who have been receiving HHS payments for years and are well aware of their responsibility to submit provider logs, credibly testified that they submitted the logs for ██████████ when the logs were initially due in ██████████. The Department's sole witness, on the other hand, had no personal knowledge of whether the provider logs were timely submitted and he could not speak to the validity of the action taken by the Central Office. Given the lack of evidence submitted by the Department and the credible testimony offered by Appellant, the undersigned Administrative Law Judge finds that the provider logs were timely submitted back in ██████████ and the Department erred in suspending payments.

Moreover, even assuming for the sake of argument that the logs were not submitted back in ██████████, it is undisputed that the logs were returned prior to the effective date of the suspension. Accordingly, even if the initial notice was sent properly, the defect was timely remedied and the suspension itself never should have been implemented. By doing so, the Department erred.

To the extent the Department's witness now claims that, even though the logs were returned, the suspension was proper and payments cannot resume until the annual redetermination is completed, his testimony has no basis in law or policy. The next redetermination in this case is not scheduled to be completed until ██████████, but it does appear that the Adult Services Worker assigned to the case failed to conduct, or even attempt to conduct, the required ██████-month review. However, regardless of whether the Department failed to conduct any redetermination because of the worker's neglect, the suspension in this case was not based on the lack of an annual redetermination and no negative action notice was sent to Appellant notifying her that payments would be suspended for that reason. Consequently, the Department cannot

base any suspension on the lack of annual redetermination or require that a new determination be completed prior to the suspension be lifted. If the suspension was improper, as it was in this case, payments may resume without the Adult Services Worker meeting with Appellant and the Department failed to point to any authority even suggesting otherwise.

The sole negative action notice sent in this case states that, effective ██████████ HHS will be suspended until the past due provider logs were returned. It is also undisputed that the logs were provided prior to the effective date of the suspension and, consequently, the Department clearly erred in suspending Appellant's HHS.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED THAT:

The Department's decision is **REVERSED** and it must initiate the reinstatement of Appellant's HHS, with the effective date of reinstatement being the date payments first stopped.

Steven Kibit

Steven Kibit
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Community Health

Date Signed: ██████████

Date Mailed: ██████████

SK/db

cc: ██████████
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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.