

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES
P.O. Box 30763, Lansing, MI 48909
(517) 335-2484; Fax: (517) 373-4147

IN THE MATTER OF:

Docket No. 15-002563 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.*, and upon Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. ██████████, Appellant's granddaughter and home help provider, appeared and testified on Appellant's behalf. Appellant testified on her own behalf. ██████████, Appeals Review Officer, represented the Department of Health and Human Services (DHHS or Department). ██████████, Adult Services Specialist, and ██████████, Adult Services Supervisor, testified as witnesses for the Department.

ISSUE

Did the Department properly deny Appellant's request for additional Home Help Services (HHS)?¹

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 lumbar back myositis, arthritis, diabetes, hypertension, osteoarthritis, arteriosclerotic heart disease, degenerative disc disease, and obesity. (Exhibit A, pages 7, 9).
2. Appellant has been receiving HHS though the Department in the amount of ██████ hours and ██████ minutes per month, with a total monthly care cost of ██████ (Exhibit A, page 14).

¹ Appellant's request for hearing also identified a second issue involving the Department's proposed closure of Appellant's case, but both parties confirmed that the second issue was resolved prior to the hearing and that Appellant's case would remain open.

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3. On ██████████, Appellant's former case worker, ██████████, conducted a reassessment and home visit. (Testimony of Appellant's representative; Testimony of ██████████)
4. At that time, Appellant and her representative requested additional HHS because of Appellant's increased needs. (Testimony of Appellant's representative).
5. ██████████ indicated that the request for additional HHS would be approved. (Testimony of Appellant's representative).
6. However, no increase was ever made. (Testimony of Appellant's representative; Testimony of ██████████)
7. On ██████████, Appellant's representative telephoned ██████████ about the delay in approving an increase. (Exhibit A, page 13; Testimony of Appellant's representative).
8. After that telephone call, ██████████ entered a case note stating: "Updating case, to be done soon. Changes explained." (Exhibit A, page 13).
9. However, no changes were made and ██████████ went on leave soon after that telephone call. (Testimony of Appellant's representative; Testimony of ██████████)
10. Appellant's representative subsequently called Hurst about the increase in services. (Testimony of Appellant's representative; Testimony of ██████████)
11. ██████████ investigated the file, but there was no indication in it as to what, if any, increase in services should be made and why. (Testimony of ██████████).
12. Given the lack of information in the file identifying a basis for an increase, ██████████ decided not to implement an increase. (Testimony of ██████████).
13. ██████████ has not yet returned from her leave. (Testimony of ██████████)
14. On ██████████, the Michigan Administrative Hearing System (MAHS) receive the request for hearing in this matter. (Exhibit A, pages 4-6).
15. In that request, Appellant and her representative ask that her case be reviewed going back to ██████████ and that the promised increase in services be implemented. (Exhibit A, pages 4-6).
16. Appellant's case was subsequently assigned to ██████████ and a reassessment/home visit was completed on ██████████. (Testimony of ██████████).

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17. Based on that reassessment, ██████████ plans to increase Appellant's HHS, though she was still in the process of determining the amount of the increase at the time of the hearing. (Testimony of ██████████).
18. According to Appellant's representative, Appellant's needs did not change between ██████████ and the date of the home visit conducted by ██████████. (Testimony of Appellant's representative).

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.

Here, with respect to her HHS, Appellant and her representative seek to have Appellant's case be reviewed going back to ██████████ and to have an increase in services promised by Appellant's former case worker be implemented.

In response, the Department's representative argues that any appeal arising from the ██████████ assessment is untimely as a beneficiary only has ██████████ days from the date a notice of action is mailed to request a hearing and the request for hearing in this case was not filed until ██████████. See 42 CFR 431.221(d).

However, the ██████████ day deadline runs from the date the notice of action is mailed and, in this case, no such negative action notice was ever sent out. Instead, given ██████████ notes and Appellant's representative's credible testimony, it appears that the former worker actually decided to approve the request for additional HHS, but simply failed to implement any increase prior to taking leave.

Moreover, while the undersigned Administrative Law Judge sympathizes with ██████████ testimony that she did not find anything regarding an increase in Appellant's file when she investigated Appellant's claims that ██████████ approved an increase, the lack of information in the file is solely the fault of the former case worker and ██████████ also had no basis for denying an increase. Moreover, to the extent the Department lacked information regarding Appellant's services, it could have had Appellant's case reassessed at that time rather than refusing to take any action and essentially denying the requested increase in services without any written notice.

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Appellant and her representative requested additional HHS on [REDACTED] and, while it appears that the request was going to be approved, the Department subsequently erred by taking no action on the request. Accordingly, the Department's decision must be reversed and it must reassess Appellant's request for additional HHS.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED THAT:

The Department's decision is **REVERSED** and it must initiate a reassessment of Appellant's request for additional HHS and make payment for benefits Appellant is otherwise entitled to, with a retroactive effective date of [REDACTED].

Steven Kibit

Steven J. Kibit
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Health and Human Services

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

SK/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.