

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES**

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

IN THE MATTER OF:

██████████,

Appellant

_____ /

Docket No. 15-003088 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.*, upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. Appellant did not appear. ██████████ appeared as Appellant's Hearing Representative.

██████████, Appeals Review Officer, represented the Department of Community Health. ██████████, Adult Services Worker (ASW), and ██████████, Adult Services Supervisor, (ASS), appeared as witnesses for the Department.

ISSUE

Does Appellant have a right to an administrative hearing regarding a request for an increase in Home Help Service Hours (HHS) without having had a face-to-face assessment?

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 female beneficiary of the Medicaid and SSI programs. Appellant has been diagnosed with HTN, DM, Post cva, Leg weakness. (Exhibit A.14).
2. Pursuant to a new referral, on 10/7/14 the ASW conducted an initial home visit assessment. (Exhibit A.7) Appellant lives with Helping Hands which has room and board on her monthly payment. (Exhibit A.7).
3. On ██████████ the Department issued a DHS-1210 notice approving Appellant HHS with a case opening effective date of ██████████ in the amount of ██████████ per month. (Exhibit A.5)
4. On or about ██████████ Appellant filed a Request for an Administrative Hearing requesting additional hours for bathing and clothing, and

that she has a hard time moving from her chair to her wheel chair.
(Exhibit A.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.

The Social Security Act and the federal regulations which implement the Social Security Act require an opportunity for fair hearing to any recipient who believes the Department may have taken an action erroneously. *See 42 CFR 431.200 et seq.* The opportunity to fair hearing is limited by a requirement that the request be made within 90 days of the negative action. The regulations provide, in pertinent part:

Request for hearing.

(d) The agency must allow the applicant or recipient a reasonable time, not to exceed 90 days from the date that notice of action is mailed, to request a hearing. *42 CFR 431.221(d).*

The Department of Licensing and Regulatory Affairs (LARA) General Rules applicable to the Department regarding requests for hearing and timeliness state in pertinent part:

...(4) A claimant shall be provided 90 days from the mailing of the notice ...to request a hearing. MAC R 400.904(4).

Additionally, ASM 150 indicates that applicable hearing procedures for adult services cases are found in the Bridges Administrative Manual (BAM 600, Hearings). ASM 150, 2 of 5. BAM 600 states in part:

The client or authorized hearing representative has 90 calendar days from the date of the written notice of case action to request a hearing. BAM 600, p 5 of 44.

In the case herein, Appellant stated that he was not disputing the initial case opening hours, but rather, was requesting an increase in hours since the initial or last assessment. Evidently, Appellant did not request the DHS increase his hours but instead filed a hearing request.

The purview of an administrative law judge (ALJ) is to review the Department's action and to make a determination if those actions are in compliance with Department policy, and not contrary to law. The ALJ must base the hearing decision focusing on the time of the assessment. However here, there is nothing for the ALJ to review as the

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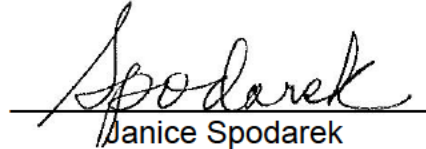
Department has not acted. The Department pointed out that in fact, in order for any increase in HHS hours, there must be a face-to-face reassessment:

A new face-to-face assessment is required if there is a request for an increase in services before payment is authorized. Adult Services Manual (ASM) 120, 12-1-2013, Page 1 of 7.

Under these facts and circumstances, there is no jurisdiction for the undersigned Administrative Law Judge to proceed with a substantive review as there is no action here to review. If Appellant requests an increase, and if and when the Department issues a notice of disposition on that request, then a right to an administrative hearing will ensure. As this case stands, there is no right to a review and thus, Appellant's hearing request must be dismissed. 42 CFR 431.221(d).

IT IS THEREFORE ORDERED that

The above-titled matter is **DISMISSED**.



Janice Spodarek
Administrative Law Judge
for Nick Lyon, Director

Michigan Department of Health and Human
Services

JS/ [REDACTED]

cc: [REDACTED]

Date Signed: [REDACTED]

Date Mailed: [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 must 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.