

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. 15-000956 HHS

██████████

██████████

DECISION AND ORDER OF DISMISSAL

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 hearing.

After due notice, a telephone hearing was held on ██████████. Appellant appeared and testified on his own behalf. ██████████, Appeals Review Officer, represented the Department of Community Health (DCH or Department). ██████████ Adult Services Worker (ASW) with the ██████████ County Department of Human Services (DHS), testified as a witness for the Department.

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 chronic obstructive pulmonary disease; rotator cuff syndrome; congestive heart failure; hypertension; coronary artery disease; osteoarthritis; and diabetes. (Exhibit A, pages 9, 11).
2. Appellant had been receiving HHS in the amount of █████ hours and █████ minutes per month, with a total monthly care cost of █████. (Exhibit A, page 14).
3. Specifically, services were authorized for assistance with the Instrumental Activities of Daily Living (IADLs) of housework, laundry, shopping, and meal preparation. (Exhibit A, page 14).
4. In █████ ASW █████ sent Appellant written advance notice that his HHS would be terminated on █████, because he did not need hands-on assistance with any Activities of Daily Living (ADLs), as required by policy in order to receive HHS. (Testimony of Appellant).

██████████
Docket No. 15-000956-HHS
Decision and Order of Dismissal

5. Appellant filed a request for hearing with respect to that termination, but he failed to appear for the administrative hearing that was scheduled and his appeal was subsequently dismissed. (Testimony of Appellant).
6. On ██████████, ASW ██████████ sent Appellant written notice that the provider log for ██████████ had not been received and that Appellant must return a completed log for the one day that month where he received HHS in order to avoid a recoupment action. (Exhibit A, page 8; Testimony of ASW ██████████).
7. On ██████████, the Michigan Administrative Hearing System (MAHS) received the request for hearing filed by Appellant in this matter. (Exhibit A, page 4).
8. Subsequently, ASW ██████████ received a copy of the completed provider log for ██████████ (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.

While HHS are Medicaid covered services, the Code of Federal Regulations only affords a Medicaid beneficiary a right to a fair hearing when the Department takes a negative action, such as the denial, reduction, suspension, or termination of a requested or previously authorized Medicaid covered service. See 42 CFR 431.200 *et seq.*

In this case, it is undisputed that no such negative action has been taken. While ASW ██████████ sent Appellant a written warning of a potential recoupment action, and what he could do to avoid such an action, the Department did not actually initiate any recoupment action that would give rise to the right to a fair hearing. Accordingly, this matter should be dismissed for a lack of jurisdiction.

Moreover, even if the notice could be construed as a negative action, it is also undisputed that Appellant subsequently returned the requested provider log and that this appeal would therefore be moot.

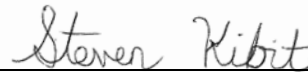
Docket No. 15-000956-HHS
Decision and Order of Dismissal

Additionally, to the extent Appellant wishes to challenge the [REDACTED] termination of his HHS, that issue is also outside the undersigned Administrative Law Judge's jurisdiction. The opportunity for fair hearing is limited by a requirement that the request for hearing be made within [REDACTED] days of the notice of negative action. See 42 CFR 431.221(d). Appellant's current request for hearing was filed well outside of that [REDACTED] day period and, while Appellant previously filed a timely request for hearing with respect to the termination of his HHS, he also failed to appear for the administrative hearing that was scheduled and his appeal was properly dismissed. Appellant also had an opportunity to request a rehearing or reconsideration of that order of dismissal, or to appeal the order to Circuit Court, within 30 days, but he failed to do so and he cannot now file a new, untimely request for hearing on the same issue when no new action has been taken.

IT IS HEREBY ORDERED:

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

If you have any questions, please contact the Michigan Administrative Hearing System at (517) 335-2484.



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

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

SK/db

cc: [REDACTED]

**** NOTICE ****

The Appellant may request a rehearing or reconsideration, or appeal the Dismissal Order to Circuit Court within 30 days of the receipt of the Order