

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

P.O. Box 30763, Lansing, MI 48909
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IN THE MATTER OF:

██████████,

Appellant.

Docket No. 15-003757 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's son, appeared and testified on Appellant's behalf. Appellant and ██████████, his caregiver, also testified as witnesses for Appellant. ██████████, Appeals Review Officer, represented the Department of Health and Human Services (DHHS or Department). ██████████ ██████████, Adult Services Worker (ASW), and ██████████ Adult Services Supervisor, testified as a witness for the Department.

ISSUE

Did the Department properly terminate 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 degenerative arthritis, hypertension, depression, and arteriosclerotic heart disease. (Exhibit A, pages 7, 9).
2. Appellant had been receiving HHS through the Department 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, page 17).
3. On ██████████, Appellant's HHS payments stopped. (Exhibit A, page 19; Testimony of Appellant's representative; Testimony of ASW ██████████).
4. No written notice, advance or otherwise, was sent with respect to that negative action. (Testimony of ASW ██████████).

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5. According to ASW ██████████, the payments were stopped automatically by the Department's computer system because no annual redetermination had been completed. (Testimony of ASW ██████████).
6. No attempts at an annual redetermination had been made prior to payments stopping. (Testimony of ASW ██████████).
7. On ██████████ after failing to contact Appellant by telephone earlier that day, ASW ██████████ went to Appellant's home to conduct a redetermination. (Testimony of ASW ██████████).
8. ASW ██████████ did not give Appellant any advance notice of the home visit and Appellant was not there at that time. (Testimony of ASW ██████████).
9. That same day, the Department sent Appellant written notice that her HHS would be terminated on ██████████ because "[y]ou were not available for a scheduled home visit for redetermination purposes". (Exhibit A, pages 10-12).
10. On ██████████ the Michigan Administrative Hearing System (MAHS) received the request for hearing filed in this matter. (Exhibit A, page 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.

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, as discussed above, Appellant's HHS stopped on ██████████ without any notice being sent. According to ASW ██████████, the payments were stopped automatically by the Department's computer system because no annual redetermination had been completed. Months later, the Department also sent Appellant written notice that her HHS would be terminated on ██████████ because she was not available for a scheduled home visit for redetermination purposes.

HHS are governed by the applicable Adult Services Manuals (ASMs) and, with respect to redeterminations, ASM 135 (5-1-2013) does provide that home help cases must be reviewed every ██████████ months, with different requirements for ██████████ month reviews and annual redeterminations. See ASM 135, pages 1-2.

However, while annual redeterminations are required, ASM 150 (5-1-2013) and ASM 170 (5-1-2013) also provide that advance notice must be given prior to negative actions, such as suspensions or terminations of payments, being taken. For example, ASM 150 states in part:

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.

Administrative Hearings

The client may appeal any negative action by requesting an administrative hearing. A DCH-0092, Request for Hearing form, is generated whenever a negative action notice is printed from ASCAP and must be mailed to the client with the negative action notice.

Note: Home help providers **cannot** appeal a negative action given to the client. Only the client can request an administrative hearing.

Hearing procedures are explained in Bridges Administrative Manual (BAM 600, Hearings).

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.

If the client does not request an administrative hearing before the effective date, the adult services specialist must proceed with the proposed action.

If the client requests an administrative hearing before the effective date of the negative action, and the specialist is made aware of the hearing request, continue payments until

a hearing decision has been made. If the specialist is made aware of the hearing request **after** payments have ended, payments must be reinstated pending the outcome of the hearing. Offer the client the option of discontinuing payment pending the hearing decision.

Note: When payments are continued pending the outcome of a hearing, the client must repay any overpayments if the department's negative action is upheld. Initiate recoupment procedures by sending the client a Recoupment Letter.

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.

- The client has been admitted to an institution or setting (for example, hospital, nursing home) where the client no longer qualifies for federal financial participation under the Medicaid State Plan for personal care services in the community.

Note: When a client is admitted to a hospital or nursing home, the facility is reimbursed for the client's care on the day the client is admitted, but not for the day of discharge. The home help provider cannot be reimbursed for the date the client is admitted to the facility but may be paid for the day of discharge.

- The client cannot be located and the department mail directed to the client's last known address has been returned by the post office indicating the forwarding address is unknown.

Note: In this circumstance, a services payment must be made available if the client is located during the payment period covered by the returned warrant.

- The client has been accepted for services in a new jurisdiction and that fact has been established by the jurisdiction previously providing services.
- The time frame for a services payment, granted for a specific time period, has elapsed. The client was informed, in writing, at the time payments were initiated, that services would automatically terminate at the end of the specified period.

Example: The DHS-1210 clearly states a begin and end date for the services payments.

ASM 150, pages 2-4

Similarly, ASM 170 states in part:

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.

A copy of the DCH-0092, Request for Hearing form is automatically generated from ASCAP when the DHS-1212 is printed. This must be forwarded to the client with the negative action notice.

Administrative Hearing Requests

Clients have the option to request an administrative hearing on all negative actions.

If the client requests a hearing before the effective date of the negative action, and the specialist is made aware of the hearing request, continue payments until a hearing decision has been made. If the specialist is made aware of the hearing request after payments have ended, payments must be reinstated pending the outcome of the hearing. Offer the client the option of suspending payments until after the hearing decision.

Note: When payments are continued pending the outcome of a hearing, the client must repay any overpayments if the Department's negative action is upheld. Initiate recoupment procedures by sending the client a DHS-566.

ASM 170, page 2 of 3

In this case, the Department clearly failed to comply with the above policies regarding advance notice when it stopped Appellant's HHS. Instead of providing the required advance notice of at least ██████ business days in this case, payments simply stopped without any notice, advance or otherwise, on ████████████████████. That error denied Appellant proper advance notice of what action the Department was taking and the reason for that action, in addition to preventing her from filing a request for hearing soon enough so that her HHS would remain in place until a hearing decision has been made. Moreover, while a written notice of termination was sent on ████████████████████ Appellant's payments had long since stopped by that date and the notice did not correct the improper earlier action.

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Additionally, the undersigned Administrative Law Judge would also note that the notice eventually sent in this case was improper as it alleged that Appellant failed to appear for a scheduled redetermination. No such redetermination was scheduled and, instead, the ASW simply showed up at Appellant's home without any notice and months after the annual redetermination should have been completed.

Accordingly, the Department's decision to terminated Appellant's services must be reversed.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED THAT:

The Department's decision is **REVERSED** and it must initiate reinstatement of HHS, effective [REDACTED], and payment for benefits Appellant is otherwise entitled to.

Steven Kibit

Steven 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.