

**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:

██████████,

Appellant.

Docket No. 15-009154 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 personally appeared and testified on her on behalf. ██████████ Appeals Review Officer, represented the Department of Health and Human Services (DHHS or Department). ██████████, Adult Services Worker (ASW), testified as a witness for the Department.

ISSUE

Did the Department properly propose to 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 had been receiving HHS through the Department. (Exhibit A).
2. On ██████████, the Department sent Appellant written notice that her Adult Services Worker (ASW) would be conducting a home visit at Appellant's home on ██████████ to complete the █████-month review for HHS eligibility. (Exhibit A, page 5).
3. On ██████████, the ASW was unable to complete the █████-month review because Appellant was not at her last known address and had informed the ASW when contacted that she had moved and was living with her brother.

4. On ██████████ the ASW told Appellant over the phone that a home visit would have to be completed and that someone from the Department would be contacting her to set up an appointment.
5. On ██████████, the Department sent Appellant an Advance Negative Action Notice, informing her that HHS would be terminated, effective ██████████
6. Appellant's HHS payments stopped in ██████████.
7. The Department took action to terminate Appellant's HHS for the reason that it had no contact with Appellant and had not authorized payment to her provider for three months.
8. On ██████████, the Michigan Administrative Hearing System (MAHS) received Appellant's request for hearing, protesting the Department's action to terminate her HHS.

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.

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 six months, with different requirements for six 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 failed to meet its burden of going forward and establishing that it acted in accordance with Department policy in proposing to terminate Appellant's HHS case. After not being able to conduct a home visit with Appellant in [REDACTED], the ASW testified that she called Appellant from her cell phone on [REDACTED], and was told by Appellant that she was living in [REDACTED] with her brother. The ASW testified that she told Appellant that the Department would be contacting her again to reschedule a home call visit since a [REDACTED]-month review needed to be completed to redetermine Appellant's HHS eligibility. However, the ASW could neither provide any detailed evidence of when the Department attempted to notify Appellant of a rescheduled home call visit nor could she provide any other evidence of what action was taken by the Department to redetermine Appellant's HHS eligibility after the attempted home call visit in [REDACTED]. Further, the Department failed to establish that it was unable to locate Appellant, and Appellant refused to cooperate with the Department in redetermining her HHS eligibility. Therefore, the Department must redetermine Appellant's HHS eligibility retro to [REDACTED].

DECISION AND ORDER

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

IT IS THEREFORE ORDERED THAT:

The Department's decision is **REVERSED** and it must initiate a redetermination of Appellant's HHS eligibility retro to [REDACTED].

Marya A Nelson-Davis

Marya A. Nelson-Davis
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Health and Human Services

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

MAND/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.