

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

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(517) 373-0722; Fax: (517) 373-4147

IN THE MATTER OF:

MAHS Docket No. 15-017405 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 telephone hearing was held on ██████████. Appellant appeared and testified on his own behalf. ██████████, Appellant's home help provider, was also present for Appellant. ██████████ Appeals Review Officer, appeared and testified on behalf of the Respondent Michigan Department of Health and Human Services (DHHS or Department). ██████████, Adult Services Worker (ASW), also testified as a witness for the Department.

ISSUE

Did the Department properly deny Appellant's request for additional 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 approved for HHS through the Department since ██████████ ██████████ ██████████. (Exhibit A, pages 6-7).
2. Given the amount of services that were needed and approved, Appellant qualified for Expanded Home Help Services (EHHS). (Exhibit A, page 30).
3. Beginning ██████████, Appellant was approved for ██████████ in HHS per month. (Exhibit A, page 17).
4. On ██████████ a ██████████ month review of Appellant's services was completed and, during that review, Appellant requested additional HHS. (Exhibit A, page 31, Testimony of Appellant).

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5. However, on ██████████, the Department sent Appellant an Advanced Negative Action notice informing him that HHS services would be reduced effective ██████████. (Exhibit A, page 23).
6. On ██████████, the Michigan Administrative Hearing System (MAHS) received a request for hearing filed by Appellant disputing the amount of his HHS. (Exhibit A, page 23).
7. MAHS docketed the appeal as Docket No. 14-017802 HHS. (Exhibit A, pages 22-23).
8. While the appeal was pending, the reduction took effect and, on ██████████ ██████████ ██████████, Appellant's HHS were reduced to ██████████ per month. (Exhibit A, page 17).
9. Docket No. 14-017802 HHS was assigned to Administrative Law Judge (ALJ) ██████████ and she held a hearing on ██████████. (Exhibit A, pages 22, 30).
10. On ██████████ issued a Decision and Order reversing the Department's decision and ordering it to submit a request for Expanded Home Help Services (EHHS) to Department's Long Term Care Services Policy Section; provide Appellant with written documentation of approval; and pay Appellant's provider the amounts to which she is entitled. (Exhibit A, pages 22-30).
11. On ██████████ ██████████ ██████████, a Registered Nurse (RN) with the Department completed a new assessment for EHHS. (Exhibit A, page 35).
12. Following that assessment, on ██████████ ██████████ ██████████, the Department sent Appellant a new Services and Payment Approval Notice. (Exhibit A, page 35).
13. On ██████████ MAHS received a request for hearing filed by Appellant with respect to the amount of the new approval. (Exhibit A, page 35).
14. MAHS docketed the second appeal as Docket No. 15-007401 HHS. (Exhibit A, pages 33, 35).
15. Docket No. 15-007401 was also assigned to ██████████ and she held a hearing on ██████████ Exhibit A, pages, 33, 45).
16. During the hearing, the parties agreed to waive the time limits so that additional information could be provided and new assessments could be completed. (Exhibit A, page 35).

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17. Specifically, Appellant was ordered to provide the Department by ██████████ with an itemized list of times and tasks that are provided by his mother and any updated medical information from ██████████; the Department was required complete a six month assessment and provide the updated in-home assessment to its RN; and the RN was ordered to conduct a complete ██████████ assessment of Appellant's needs for HHS by ██████████. (Exhibit A, page 35).
18. The relevant information was subsequently provided and the required assessments were completed. (Exhibit A, page 35).
19. Following the assessments, Appellant was to be approved for ██████ hours and █████ minutes of HHS per month, with a total monthly care cost of ██████████ per month. (Exhibit A, pages 16, 44).
20. The additional information was submitted to ██████████ and the record closed in Docket No. 15-007401 on ██████████. (Exhibit A, page 33).
21. On ██████████, ALJ Lain issued a Decision and Order in Docket No. 15-007401 concluding that the Department both properly determined that Appellant is entitled to receive ██████ hours and █████ minutes of HHS per month and appropriately approved Appellant's request for additional HHS to begin in accordance with Departmental policy. (Exhibit A, pages 33-45).
22. On ██████████ the Department approved Appellant for ██████████ in HHS per month for the time period of ██████ ██████ through ██████████. (Exhibit A, page 17).
23. On ██████████, Appellant discussed his case with his ASW and the ASW indicated that ██████████ had not set a specific date regarding new payments and that Appellant could request another hearing if he was dissatisfied. (Exhibit A, page 14; Testimony of Appellant; Testimony of ASW).
24. On ██████████, the Manager of the Long Term Care Policy Section sent a Policy Decision to Appellant's local office in response to the Decision and Order issued by ██████████ on ██████████ (Exhibit A, page 53).
25. In that Policy Decision, the Manager wrote: "Based on the documentation submitted, EHHS are approved for up to ██████████ hours and ██████████ per month starting: ██████████." (Exhibit A, page 53).
26. On ██████████ MAHS received the request for hearing filed by Appellant in this matter. (Exhibit A, pages 4-5).

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27. In that request, Appellant asks for proper enforcement of the two orders issued by ██████████ and additional HHS from ██████████ onward. (Exhibit A, page 4-5).
28. The appeal in this matter was docketed as Docket No. 15-017405 HHS and assigned to the undersigned Administrative Law Judge.
29. On ██████████, an administrative hearing was held.

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 statutes, 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, Appellant has been continually approved for HHS and the issue on appeal is the Department's denial of a request by Appellant for additional HHS. As discussed above, the request in this case followed two previous administrative hearings conducted by ██████████ and is related to the two Decision and Orders she issued. Following the first hearing, ██████████ reversed the Department's decisions to deny Appellant's request for additional HHS and to reduce his HHS effective ██████████. She also ordered that a new assessment be completed and that the Department pay Appellant's provider the amounts to which she is entitled. During the second hearing, the parties agreed to leave the record open so that additional information could be provided and new assessments could be completed. The Department then reassessed Appellant and determined that Appellant should be approved ██████████ of HHS per month. ██████████ subsequently affirmed that approval.

██████████ second Decision and Order did not specifically identify the start date of the new approval of ██████████ of HHS per month or address the reduction in ██████████. On ██████████, the Department approved Appellant for ██████████ in HHS per month for the time period of ██████████ through ██████████. It did not, however, rescind the ██████████ reduction in Appellant's HHS, from ██████████ per month to ██████████ per month, and Appellant's approval for the time period of ██████████ through ██████████ remained at the reduced amount of ██████████ per month.

Appellant was unhappy with that determination, on ██████████, Appellant discussed his case with his ASW, who indicated that ██████████ had not set a specific

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date regarding new payments and that Appellant could request another hearing if he was dissatisfied. Appellant then filed the appeal in this matter.

In support of his appeal, Appellant testified that he prevailed in the initial hearing and the Department's decision to reduce his HHS was reversed by ██████████. He also testified that he prevailed in the second hearing and that ██████████ approved an increased amount of HHS. According to Appellant however, despite those decisions, the Department has refused to retroactively approve additional HHS to which he is entitled. Specifically, Appellant testified that he is fine with the approval of ██████████ per month starting ██████████, but that he wants the difference between what should have been approved between ██████████ and ██████████ per month, and the improperly reduced amount that was paid, ██████████ per month.

In response, the Department first argues that there is no appealable issue in this case as Appellant's claims are related to enforcement of ██████████ orders and there have been no negative actions taken on Appellant's home help case since the last hearing date. However, since the last hearing date, the Department has both authorized a new approval amount and denied Appellant's request for additional HHS during the time period of ██████████ and ██████████. The denial of Appellant's request is a negative action that may be appealed and that is within this ALJ's jurisdiction. Accordingly, Appellant's request for hearing will not be dismissed for the reason argued by the Department.

With respect to the decision to deny Appellant's request for additional HHS for the time period of ██████████ and ██████████, the Department's witness testified that she and Appellant discussed his request, but that she had recently been assigned the case and, after discussing with her supervisor and the Appeals Review Officer involved in the most recent hearing, there was no authorization to approve any retroactive payments. The Department's witness also testified that she could not explain why the Policy Decision issued by the Manager of the Long Term Care Policy Section, which stated that EHHS are approved for up to ██████████ hours and ██████████ per month starting: ██████████ was not implemented, but that the ██████████ start date in the Policy Decision did not match up with any action or assessment in this date.

Given that Policy Decision, the multiple appeals and assessments, and the lack of any evidence suggesting that Appellant's condition has changed at any time in this case, Appellant could make the argument that the approval of ██████████ should go back farther than ██████████. However, that is not what he requested and, instead, he only seeks that the difference between what should have been approved between ██████████ ██████████ and ██████████ per month, and the improperly reduced amount that was paid, ██████████ per month.

Based on the record in this case, the undersigned Administrative Law Judge finds that Appellant has met his burden of proof and that the Department's decision to deny Appellant's request for additional HHS for the time period of ██████████ to ██████████ must be reversed. The change in Appellant's services for that time period

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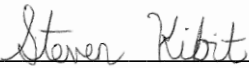
was based on the Department's decision to reduce Appellant's services, but ██████████ ordered that the reduction be reversed and a new assessment completed. Moreover, while the Department subsequently completed a new assessment, and other assessments after that, it never rescinded the improper reduction made on ██████████ following ██████████ first order or after the final assessment, which approved an even greater amount of services. By doing so, the Department erred and its decision 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 denied Appellant's request for additional HHS for the time period of ██████████ through ██████████

IT IS THEREFORE ORDERED THAT:

The Department's decision is **REVERSED** and it must initiate a reinstatement of HHS in the amount of ██████████ for the time period of ██████████ through ██████████ and reimburse Appellant and his provider for HHS they are otherwise entitled to during that time period.



Steven Kibit

Administrative Law Judge

For Nick Lyon, Director

Michigan Department of Health and Human Services

Date Signed: ██████████

Date Mailed: ██████████

SK/db

cc: ██████████
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***** 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.