

**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:

Docket No. 15-013601 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, an in-person hearing was held on ██████████ Appellant appeared and testified on her own behalf. ██████████ Appellant's caregiver, also testified as a witness for Appellant. ██████████ Appeals Review Officer, represented the Respondent Department of Health and Human Services (DHHS or Department). ██████████ Adult Services Supervisor, and ██████████ Adult Services Worker (ASW), testified as witnesses for the Department. ██████████ ██████████, Independent Living Services (ILS) Specialist was also present for the Department.

ISSUE

Did the Department properly decide to suspend and 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 Medicaid beneficiary who had been approved for ██████████ per month in HHS through the Department. (Exhibit A, page 10).
2. Appellant's caregiver was her enrolled home help provider. (Exhibit A, page 11).
3. On or about ██████████, Appellant's HHS payments stopped after she was hospitalized. (Exhibit A, page 10).

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4. At the time of the hospitalization, an Adult Protective Services (APS) complaint was also opened against Appellant's caregiver with respect to his care of Appellant. (Exhibit A, page 10).
5. Appellant spoke with representatives from APS and confirmed the complaint against her caregiver. (Testimony of Appellant).
6. Appellant remained in the hospital for approximately two to three weeks. (Testimony of Appellant's caregiver).
7. After being discharged from the hospital, Appellant stayed with some of her caregiver's relatives in California. (Testimony of Appellant's caregiver).
8. On ██████████, the Department sent Appellant written notice that, effective ██████████, her HHS would be suspended. (Exhibit A, pages 8-9).
9. The notice also stated: "Please select a provider if you are still in need of ILS services. [Appellant's caregiver] can no longer be your provider as he was substantiated for abuse or neglect to you." (Exhibit A, page 9).
10. Appellant eventually returned to ██████████ and moved back in with her caregiver. (Testimony of Appellant's caregiver).
11. On ██████████, the Michigan Administrative Hearing System (MAHS) received the request for hearing filed by Appellant in this matter. (Exhibit A, pages 4-5).
12. In that request, Appellant stated that due to her many mental and physical issues, in addition to the fact that she was off her medications, she said things about herself and her caregiver that were not true. (Exhibit A, pages 4-5).
13. She also stated that her caregiver has saved her life and that the workers at the Department have mistreated him. (Exhibit A, pages 4-5).
14. On ██████████, the Department sent Appellant written notice that, effective ██████████, her HHS would be terminated because Appellant has not had a home help provider since April and it did not appear that the services were needed. (Exhibit A, pages 6-7).

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

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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 must be provided by an enrolled and approved home help provider and, while the client has the right to choose the home help provider, the “determination of provider criteria is the responsibility of the adult services specialist.” See Adult Services Manual (ASM) 135 (12-1-2013), page 1.

With respect to the criteria for being a provider, ASM 135 provides in part:

Age

The provider must be 18 years and older.

Ability

To follow instructions and home help program procedures.

To perform the services required.

To handle emergencies.

Physical Health

The provider’s health must be adequate to perform the needed services.

Knowledge

The provider must know when to seek assistance from appropriate sources in the event of an emergency.

Personal Qualities

The provider must be dependable and able to meet job demands.

Training

The provider must be willing to participate in available training programs if necessary.

ASM 135, page 2

Moreover, ASM 135 further states that “[h]ome help payment may be terminated if the provider fails to meet any of the provider criteria.” ASM 135, page 2.

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Here, the Department first suspended Appellant's HHS on the basis that Appellant's caregiver no longer met the criteria for being a home help provider and that her services could not be authorized until she selected a new home help provider. Subsequently, the Department also terminated Appellant's HHS after she refused to select a new home help provider and went without HHS for months

In support of its actions, the Department's Adult Services Supervisor testified that, on [REDACTED], the Home Help Program received information that there had been an abuse or neglect complaint substantiated against Appellant's caregiver. She also testified that, given that substantiated complaint, it was determined that Appellant's caregiver no longer met the criteria for being a home help provider and that Appellant's HHS should be suspended until Appellant got a new provider that did meet the criteria for being a home help provider. She further testified that, as Appellant never got a new home help provider and refused to do so, her suspended HHS were subsequently terminated.

In response, Appellant testified that various women employed by the Department have falsely accused Appellant's caregiver of abuse previously and that Appellant has always denied it. She also testified that she and her caregiver have had earlier issues with the Department with respect to a reduction in Appellant's HHS and an issue regarding what those services encompass, and that the Department repeatedly failed to give her the paperwork to file an appeal with respect to those issues. She further testified that, in part because of the problems with the Department, she stopped taking her medications and that, because she was off her medications and suffering from severe mental and physical issues, she falsely reported that the caregiver had engaged in abuse or neglect when the APS was investigating him. Appellant also testified that, after she did confirm the complaint, the Department finally sent the paperwork to request a hearing along with the negative action notice and that the Department has disregarded her attempts to correct the false complaint she made.

Appellant's caregiver also testified regarding the previous reductions in Appellant's services taken by the Department and the Department's failure to send Appellant the paperwork necessary to request a hearing over that reduction. He further testified as to the previous false accusations made by the Department's workers against him and their constant harassment. According to Appellant's caregiver, both APS and the police spoke with him after Appellant filed a report and he repeatedly told them that the complaint was wrong. He was also unable to see Appellant while she was in the hospital and did not hear from her until two to three weeks later when she called him to say she was out on the street. He then sent her to stay with some of his relatives in California for a few months, but that she is now back and they are trying to correct the APS report. Appellant's caregiver also testified that he was never charged with any crime and that he never got a letter from the Department saying he could not be a home help provider.

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Appellant bears the burden of proving by a preponderance of the evidence that the Department erred in suspending and terminating her HHS.

Here, Appellant has failed to meet that burden of proof and the Department's decisions must therefore be affirmed. It is undisputed that an APS complaint for abuse or neglect of Appellant was substantiated against Appellant's caregiver, in at least in part because of Appellant's own reports. Moreover, given that substantiated complaint, the Department properly found that Appellant's caregiver no longer met the general criteria for being a home help provider and that HHS could not be reauthorized until she got a new provider, which Appellant has declined to do. Moreover, even if Appellant is now testifying to something different, the Department remains justified in relying on the earlier, substantiated report in determining that her caregiver lacked the ability or personal qualities to properly perform the services required.

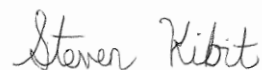
HHS may only be provided if a client has an approved provider and the above policy states that HHS payments may be terminated if the provider fails to meet any of the criteria for being a provider on an ongoing basis. That is what occurred in this case as the Department found that Appellant's caregiver no longer met that criteria for being a home help provider and it terminated Appellant's HHS after she refused to select a new home help provider; and Appellant has failed to meet her burden of proving by a preponderance of the evidence that the Department erred in doing so.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED THAT:

The Department's decision is **AFFIRMED**.



Steven Kibit
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Health and Human Services

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

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cc: [REDACTED]
[REDACTED]
[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.