



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED] MI [REDACTED]

Date Mailed: December 6, 2023
MOAHR Docket No.: 23-007208
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Corey Arendt

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9; 42 CFR 431.200 to 431.250; and 42 CFR 438.400 to 438.424, upon the Petitioner's request for a hearing.

After due notice, a hearing was held on November 29, 2023. Petitioner appeared on her own behalf. Leigha Klaver, Appeals Review Officer, appeared on behalf of the Respondent, the Michigan Department of Health and Human Services (Department). Sherry Smith, Adult Services Worker, appeared as a witness for the Department.

Exhibits:

Petitioner	None
Department	A – Hearing Summary

ISSUE

Did the Department properly close Petitioner's Home Help Services (HHS) case?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Prior to August 1, 2023, and continuing through September 1, 2023, Petitioner was approved for and receiving HHS benefits. (Exhibit A.)
2. On August 1, 2023, Petitioner received notice of a Health Care Coverage Determination. The notice indicated Petitioner's Medicaid coverage was changing effective September 1, 2023. (Exhibit A; Testimony.)

3. On September 1, 2023, Petitioner's Medicaid Scope of coverage changed from 1D to 1Y. (Exhibit A; Testimony.)
4. On or around October 5, 2023, the Department became aware of Petitioner's Medicaid scope of coverage change and determined Petitioner was no longer eligible for HHS. (Testimony.)
5. Following the discovery, on October 5, 2023, the Department sent Petitioner an Advance Negative Action Notice. The notice indicated Petitioner's HHS case would be terminated September 1, 2023. (Exhibit A.)
6. On or around October 31, 2023, the Michigan Office of Administrative Hearings and Rules, received from Petitioner, a request for hearing. (Exhibit A.)

CONCLUSIONS OF LAW

The Medical Assistance Program (MA) 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 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 health professional and may be provided by individuals or by private or public agencies.

The Adult Services Manual addresses Notification of Eligibility Determinations and provides the following:

DHS-1212, Advance Negative Action Notice

The DHS-1212, Advance Negative Action Notice, is used and generated from MiAIMS 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.**

Negative Actions Requiring 10-day Notice

The effective date of the negative action is 10-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 worker must proceed with the proposed action.

If the client requests an administrative hearing before the effective date of the negative action, and the ASW is made aware of the hearing request, continue payments until a hearing decision has been made. If the ASW 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 DHS-566, Recoupment Letter.

Negative Actions Not Requiring 10-Day Notice

The following situations do not require 10-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 action on the client's behalf) or death of the caregiver.

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 Contacts module of MiAIMS. Written statements from the client must be maintained in the paper case file and documented in the Contacts module.

- 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.¹

In this case, the Department determined Petitioner was no longer eligible for HHS due to a change in Petitioner's scope of Medicaid coverage; and as a result, issued Petitioner a negative action notice. The notice sent, however, did not meet the requirements of ASM 150, in that Petitioner was not afforded advanced notice of the negative action.

¹ Adult Services Manual, 150, Notification of Eligibility Determination May 1, 2023, pp 2-4.

ASM 150 provides Advanced Negative Action Notices should be used in situations where there is a case closure exactly like the one in this case. ASM 150 further provides that in cases of a case closure like this one, the negative action notice effective date must be 10-business days **after** the date the notice is mailed to the client.

Based on the facts provided, it is clear the Petitioner in this case was not provided the appropriate notice provided for in ASM 150; and, furthermore, the Department did not provide any exception to ASM 150 that would afford them the right to not provide Petitioner with the notice required.

Accordingly, I find the Department improperly terminated Petitioner's HHS case.

DECISION AND ORDER

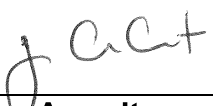
The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department improperly closed Petitioner's HHS case.

IT IS, THEREFORE, ORDERED that:

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

The Department is further ordered to rescind the October 5, 2023, Negative Action Notice, reassess Petitioner's eligibility, and issue retroactive benefits if otherwise eligible and qualified.

CA/pe



Corey Arendt
Administrative Law Judge
for Elizabeth Hertel, Director
Department of Health and Human Services

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30763
Lansing, Michigan 48909-8139

Via Electronic Mail:

Agency Representative

Leigha Klaver
MDHHS Appeals Section
P.O. Box 30807
Lansing, MI 48909
Klaverl@michigan.gov

DHHS Department Contact

Michelle Martin
MDHHS
400 S. Pine St., 6th Floor
Lansing, MI 48933
MDHHS-Home-Help-Policy@michigan.gov

DHHS Location Contact

Mary Davis
Oakland County HHS
51111 Woodward Ave., 1st Floor
Pontiac, MI 48342
Davism11@michigan.gov

DHHS Department Representative

Mary Carrier
MDHHS Appeals Section
P.O. Box 30807
Lansing, MI 48909
MDHHS-Appeals@michigan.gov

Via First Class Mail:

Petitioner

[REDACTED]
[REDACTED] MI [REDACTED]