

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF:

██████████

Appellant

_____ /

Docket No. 2009-6478 HHS

Case No. ██████████

Load No. ██████████

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.*, upon the Appellant's request for a hearing.

After due notice, a telephone hearing was held on ██████████. ██████████, Appellant's representative personally appeared and testified on Appellant's behalf. ██████████ and ██████████ appeared and testified as witnesses for Appellant. ██████████, represented the Department of Community Health (Department). ██████████ and ██████████, appeared and testified as witnesses for the Department.

ISSUE

Did the Department properly determine that Appellant was not eligible for Home Help Services?

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.
2. Appellant's representative completed and signed an application on Appellant's behalf.
3. Appellant's representative indicated in the "Living Arrangement" section of the application that Appellant lives with spouse who is not disabled. (ALJ I)
4. On ██████████, ██████████ noted during his home call visit with Appellant: Present during the home visit, was Appellant, his wife, his son, and his son's wife; Appellant's son advised the worker that his mother and

Appellant are legally married, and his mother would be moving into his home; and when questioned, Appellant's representative/son confirmed that his mother is physically able to care for Appellant, but is unwilling to care for him because she is afraid that she will "do something wrong." (Exhibit 1, p. 7)

5. On [REDACTED], [REDACTED], sent the Appellant an Advance Negative Action Notice, informing him that he was denied home help services on the basis that his spouse is able to provide the services that was requested on his behalf. (Exhibit 1, pp. 2 & 5)
6. On [REDACTED] the State Office of Administrative Hearings and Rules received Appellant's hearing request, protesting the denial of home help services.

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 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.

Necessity For Service

The adult services worker is responsible for determining the necessity and level of need for HHS based on:

- Customer choice.
- A complete comprehensive assessment and determination of the customer's need for personal care services.
- Verification of the customer's medical need by a Medicaid enrolled medical professional. The customer is responsible for obtaining the medical certification of need. The Medicaid provider identification number must be entered on the form by the medical provider.

The Medical Needs form must be signed and dated by one of the following medical professionals:

- Physician
- Nurse Practitioner
- Occupational Therapist
- Physical Therapist

The physician is to certify that the customer's need for service is related to an existing medical condition. The physician does not prescribe or authorize personal care services. If the Medical Needs form has not been returned, the adult services worker should follow-up with the customer and/or medical professional. If the case is closed and reopened within 90 days with no changes in the customer's condition, a new FIA-54A is not necessary.

Do **not** authorize HHS prior to the date of the medical professional signature on the FIA-54A.

Services not Covered by Home Help Services

Do **not** authorize HHS payment for the following:

- Supervising, monitoring, reminding, guiding or encouraging (functional assessment rank 2);
- Services provided for the benefit of others;
- **Services for which a responsible relative is able and available to provide;**
- Services provided free of charge;
- Services provided by another resource at the same time;
- Transportation - See Program Administrative Manual (PAM) 825 for medical transportation policy and procedures.
- Money management, e.g., power of attorney, representative payee;
- Medical services;

ASM 363; INDEPENDENT LIVING SERVICES PROGRAM PROCEDURES
ASB 2007-003 6-1-2007

RESPONSIBLE RELATIVE

A person's spouse.

A parent of an unmarried child under age 18

ASG Glossary; ADULT SERVICES GLOSSARY; ASB 2007-003 6-1-2007

In this case, Appellant's representative testified that his mother, Appellant's wife, lives with her sister, and he never told the worker that she was going to be moving into his home with Appellant. Appellant's representative testified that his mother is "totally disabled" and she does not get along with Appellant and has been separated from him for 5 years. Appellant's representative testified that when he completed the application on Appellant's behalf, he was referring to his living arrangement with his own wife, not his mother, in the "Living Arrangement" section. (See ALJ I)

According to Department policy, the Department cannot authorize a home help services payment to a **responsible relative**. A **responsible relative** includes the client's spouse. There is no dispute that Appellant is legally married. Therefore, the issue to be resolved is whether Appellant's spouse is able and available to provide the home help services that Appellant is requesting.

This Administrative Law Judge finds that the Department properly denied Appellant's application based on the application and information obtained during the home call visit. Based on the testimony of Appellant's representative, Appellant's spouse refuses to assist Appellant with his activities of daily living because she does not get along with him. The preponderance of evidence fails to establish that she is unable to assist Appellant. Appellant's representative/son testified that he and his wife own a motel, and there are times his mother helps his wife clean the motel. If his mother is able to help clean a motel, she should be able to assist her husband with his personal care activities. There is no documentation or medical evidence from a qualified medical source which establishes that Appellant's spouse is disabled and unable to assist Appellant with his personal care needs. Therefore, the Department's decision must be upheld.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly denied Appellant's application for Home Help Services.

IT IS THEREFORE ORDERED that:

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

Marya Nelson-Davis
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

Docket No. 2009-6478
Hearing Decision & Order

cc:



Date Mailed: 2/17/2009

***** NOTICE *****

The State Office of Administrative Hearings and Rules 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 State Office of Administrative Hearings and Rules 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.