

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

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IN THE MATTER OF:

Docket No. 2010-20555 HHS
Case [REDACTED]

[REDACTED]
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.*, upon the Appellant's request for a hearing.

After due notice, a hearing was held on [REDACTED]. The Appellant appeared without representation. She had no witnesses. [REDACTED] represented the Department. Her witnesses were [REDACTED] and [REDACTED].

ISSUE

Did the Department properly deny Home Help Services (HHS) benefits to the Appellant?

FINDINGS OF FACT

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

1. At the time of hearing the Appellant is a [REDACTED]-year-old, female, Medicaid beneficiary. (Appellant's Exhibit #1)
2. The Appellant is afflicted with the residuals of "right hand surgery" including pain and physical therapy. (Appellant's Exhibit #1)
3. The Appellant said that her surgery was done on [REDACTED] – and that she would be disabled for as long as four (4) months. (Appellant's Exhibit #1.)
4. On [REDACTED] the ASW observed the Appellant's husband seated in her residence. He was identified to the ASW and appeared otherwise able bodied. (See Testimony and Department's Exhibit A, p. 7.)

5. During the home visit the Appellant further advised the ASW that her husband lived “two doors” down the street – and while married they lived apart because they did not get along – but yet maintained a relationship. (Department’s Exhibit A, p. 7 and See Testimony)
6. On [REDACTED] the ASW sent the Appellant an advance negative action notice informing her that HHS would be denied because she had a spouse who was able and available to provide care. (Department’s Exhibit A, pp. 2, 4.)
7. The instant appeal was received by the State Office of Administrative Hearings and Rules for the Department of Community Health on [REDACTED]. (Appellant’s Exhibit #1)

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 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.

COMPREHENSIVE ASSESSMENT

The Adult Services Comprehensive Assessment (DHS-324) is the primary tool for determining need for services. The comprehensive Assessment will be completed on all open cases, whether a home help payment will be made or not. ASCAP, the automated workload management system provides the format for the comprehensive assessment and all information will be entered on the computer program.

Requirements for the comprehensive assessment include, but are not limited to:

- A comprehensive assessment will be completed on all new cases.
- A face-to-face contact is required with the customer in his/her place of residence.
- An interview must be conducted with the caregiver, if applicable.
- Observe a copy of the customer’s social security card.
- Observe a picture I.D. of the caregiver, if applicable.

- The assessment must be updated as often as necessary, but minimally at the six month review and annual re-determination.
- A release of information must be obtained when requesting documentation from confidential sources and/or sharing information from the agency record.
- Follow specialized rules of confidentiality when ILS cases have companion APS cases.

Adult Service Manual (ASM), §363,
pp. 2, 3 of 24, 9-1-2008.

The manual, in the Service Plan Development chapter, also provides that responsible, able and available relatives are exempt from payment. Responsible relative is specifically defined to include a spouse:

Address the following factors in the development of the service plan:

- The specific services to be provided, by whom and at what cost.
- The extent to which the client does not perform activities essential to caring for self. The intent of the Home Help program is to assist individuals to function as independently as possible. It is important to work with the recipient and the provider in developing a plan to achieve this goal.
- The kinds and amounts of activities required for the client's maintenance and functioning in the living environment.
- The availability or ability of a [responsible relative or legal dependent](#) of the client to perform the tasks the client does not perform.

Authorize HHS only for those services or times which the responsible relative/legal dependent is unavailable or unable to provide.

[] Unavailable means absence from the home, for employment or other legitimate reasons. Unable means the responsible person has disabilities of his/her own which prevent caregiving. These disabilities must be documented/verified by a medical professional on the DHS-54A.

- Do not authorize HHS payments to a responsible relative or legal dependent of the client.
- The extent to which others in the home are able and available to provide the needed services. Authorize HHS only for the benefit of the client and not for others in the home. If others are living in the home, prorate the IADL's by at least 1/2, more if appropriate.
- The availability of services currently provided free of charge. A written statement by the provider that he is no longer able to furnish the service at no cost is sufficient for payment to be authorized as long as the provider is not a responsible relative of the client.
- HHS may be authorized when the client is receiving other home care services if the services are not duplicative(Emphasis supplied)

ASM *Supra*, pages 4, 5 of 24

Furthermore, the ASM [at *glossary*] sets forth the actual definition and limiting restriction relied upon by the department:

- **RESPONSIBLE RELATIVE** [is defined as]
 - A person's spouse.
 - A parent of an unmarried child under age 18. (Emphasis supplied)

Adult Services Glossary at page 5

The Department witness testified that on in-home assessment she observed the Appellant's able bodied spouse seated in the residence. The Appellant identified him as her spouse, but added that he lived two (2) doors down – because they did not get along. She said they were married, nevertheless.

The ASW determined that the spouse was able and available to care for his wife for any need she might have.

On review of the testimony and the evidence the Administrative Law Judge finds that the assessment was accurate and drawn according to policy. The Department properly denied HHS benefits owing to the Appellant having a legal marriage to an otherwise able and available spouse. That this person chooses to live two (2) houses away from the Appellant does not adversely affect his availability to provide services. Furthermore, there was no documentation of any medical inability to provide services to his wife.

Case Name: [REDACTED]
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Hearing Decision & Order

The Appellant failed to preponderate her burden of proof.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED that:

The Department's decision is AFFIRMED.

Dale Malewska
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc: [REDACTED]

Date Mailed: 04/28/2010

***** 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.