

**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. 2010-23431 HHS  
Case No. [REDACTED]

[REDACTED],  
Appellant  
\_\_\_\_\_ /

**DECISION AND ORDER**

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 upon the Appellant's request for a hearing.

After due notice, a hearing was held on [REDACTED]. [REDACTED] appeared on his own behalf. [REDACTED], [REDACTED], [REDACTED], were present on behalf of Appellant.

[REDACTED], represented the Department. [REDACTED], [REDACTED]; and [REDACTED], appeared as witnesses for the Department.

**ISSUE**

Did the Department properly suspend 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 [REDACTED] year-old man with a diagnosis of Klinefelter's Syndrome. Klinefelter's Syndrome is a genetic condition of an additional X chromosome, resulting in varying degrees of symptoms including developmental delay. Appellant's diagnosis did not limit him from competently testifying at hearing. (Exhibit 1, page 19).
2. Appellant is a Medicaid beneficiary.
3. From at least [REDACTED], Appellant was enrolled in the Department's Home Help Services program. (Exhibit 1, page 18).
4. In [REDACTED] the Appellant's chore provider registered with DHS was [REDACTED] Appellant's mother. (Exhibit 1, page 11).

5. The Appellant lives with his mother/chore provider. (Exhibit 1, pages 11-15).
6. On or before [REDACTED], the Michigan State Police entered Appellant's home to search for a wanted fugitive. Appellant answered the door and competently answered all the questions asked by Michigan State Police Trooper. The Michigan State Police Trooper observed Appellant cooking sausage on the stove with no assistance. The Michigan State Police Trooper observed Appellant's mother in bed and not moving or responding. The Michigan State Police Trooper observed the Appellant's apartment in deplorable condition with stench and at least fifty piles of animal feces visible in the main living area, and trash, empty whiskey bottles, dirty clothes and dirty dishes everywhere. (Exhibit 1, page 18, Exhibit 2).
7. On [REDACTED], the Michigan State Police forwarded a report to DHS regarding the Appellant's deplorable living conditions. (Exhibit 1, page 18, Exhibit 2).
8. On [REDACTED], Appellant's DHS Adult Services Worker went to Appellant's home to investigate but there was no answer to his summons. (Exhibit 1, page 8).
9. On [REDACTED], Appellant's DHS Adult Services Worker went to Appellant's home to investigate but there was no answer to his summons. (Exhibit 1, page 8).
10. On [REDACTED], the Department sent a Negative Action Notice notifying Appellant that his case was being suspended. The reason given was: "house being trashed, animal feces on the floor and that [Appellant] was cooking his own meal. This is evidence that your mother/chore provider is not doing what she has been paid for... consider this...fraud." (Exhibit 1, pages 6-8).
11. On [REDACTED], the State Office of Administrative Hearings and Rules (SOAHR) received Appellant's Request for Hearing, written by his mother/chore provider. (Exhibit 1, page 4).
12. The Appellant is able to physically perform all his activities of daily living or activities of instrumental living, but may need prompting or supervision. Prompting and supervision are not services provided under HHS.
13. The Appellant's chore provider marked on the provider logs that she performed all the time and tasks authorized and turned in the provider logs to the HHS program for payment but she did not provide those services as she reported. (Exhibit 3).
14. Appellant's chore provider was paid for providing HHS services that were not provided. (Exhibit 3).

### **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 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.

A right to fair hearing is granted to a Medicaid beneficiary if his Medicaid service is suspended. *42 CFR 431.220*. The right to a Medicaid fair hearing does not extend to his chore provider. In this case, the Appellant appealed the suspension of Home Help Services. The right to appear and present his case at hearing resided with Appellant and not his chore provider. Even if a chore provider's qualifications or veracity is at issue, the chore provider does not possess the right to a hearing; or to speak at hearing without request of the Appellant.

At the outset of hearing the Administrative Law Judge asked the Appellant who he wished to represent him at hearing, and he clearly and competently answered he wished to represent himself and have no other person represent him. At all times during the hearing the Appellant represented his position competently, clearly and his answers to the Administrative Law Judge were well-articulated. The Appellant had the option to present witnesses and evidence. The Administrative Law Judge asked the Appellant if he wished to add anything further before the hearing ended and he discussed concerns about being abused by his sister. The Appellant then indicated he had nothing else to add.

The Department established that a HHS provider must complete provider logs before HHS payments can be authorized. The Department emphasized that HHS payment can only be made for actual services provided and for a chore provider to be paid for services not actually provided is fraud committed by the chore provider and the HHS recipient.

Adult Services Manual (ASM 363 9-1-08), pages 15-18 of 24 states that it is the adult services worker who determines whether a person is qualified to be a chore provider, not the Medicaid beneficiary, and the adult services worker who receives the provider logs and determines whether a payment can be issued to a chore provider, because payment cannot be paid if the services are not rendered or if the chore provider is not qualified:

## HOME HELP SERVICE PROVIDERS

**Provider Selection** The client has the right to choose the home help provider(s). As the employer of the provider, the client has the right to hire and fire providers to meet individual personal care service needs. The client may receive DHS payment for home help services from **qualified** providers only.

The determination of provider qualification is the responsibility of the adult services worker.

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**Do not authorize HHS payments to a [responsible relative](#) or [legal dependent](#) of the client.**

**Provider Criteria** Determine the provider's ability to meet the following minimum criteria in a face-to-face interview with the client **and** the provider:

#### Age

- Appropriate to complete the needed service.

#### Ability

- To follow instructions and HHS program procedures.
- To perform the services required.
- To handle emergencies.

#### Physical Health

- Adequate to perform the needed services.

#### Knowledge

- How and when to seek assistance from appropriate others in the event of an emergency.

#### Personal Qualities

- Dependable.
- Can meet job demands including overtime, if necessary.

#### Training

- Willing to participate in available training programs if necessary. HHS payment may be terminated if the provider fails to meet any of the provider criteria.

**Provider Interview** Explain the following points to the client and the provider during the initial interview:

- The provider is employed by the client **not** the State of Michigan.
- A provider who receives public assistance **must** report all income received as a home help provider to the FIS/ES.
- The client is the employer and has the right to hire and fire the provider.
- The client is responsible for notifying the worker of any change in providers or hours of care.
- The services the provider is responsible for and has agreed to deliver including the frequency, amount and type of service.
- The provider **must** keep a log of the services provided Personal Care Services Provider Log ([DHS-721](#)) and submit it on a quarterly basis. The client **must** sign the Authorization for Withholding of FICA Tax in Home Help Payments ([DHS-4771](#)).

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## PAYMENT AUTHORIZATION

### Payment Authorization System

Enter home help provider enrollments and payment authorizations on the Model Payment System (MPS) using the **Payments** module of the **ASCAP** system.

No payment can be made unless the provider has been enrolled on the MPS provider database. See the ASCAP user guide on the [adult services home page](#).

HHS payments to providers must be:

- Authorized for a specific type of service, period of time and payment amount.
- Authorized to the person actually providing the service.
- Made payable jointly to the client and the provider.

Any payment authorization that does **not** meet the above criteria must have the reason fully documented in the **Payments** module, exception rationale box, in **ASCAP**. The supervisor will document through the electronic approval process.

(Underline added by ALJ).

The Department must implement the Home Help Services in accordance to Department policy. The Adult Services worker testified that a Michigan State Trooper called to tell him the Appellant was living in the most deplorable living condition he had ever seen in his many years of law enforcement. The Adult Services worker said he attempted to make two (2) home calls, but neither the Appellant, nor his mother's chore provider answered the door or his phone calls.

The Adult Services worker testified that when the Appellant and his chore provider granted him access to the home one (1) month later the deplorable living conditions continued to exist, including fresh dog feces, excessive amounts of trash and excessive amounts of dirty laundry. (Exhibit 1, pages 14-15). The Adult Services worker said that it was unquestionable that the deplorable living condition had existed for months and the housekeeping and laundry tasks had not been performed. The Michigan State Trooper report corroborated the Adult Services worker's observations and determinations. (Exhibit 2)

The Adult Services worker testified that when he received the State Police information and he was unable to get a response from the Appellant or his chore provider he sent a Negative Action Notice suspending Appellant's HHS payment checks. (Exhibit 1, pages 6-8). The Department's suspension action was supported by the overwhelming credible evidence.

The Appellant testified that it was his sister's dog and sister's family that made the mess and it was not his or his mother's responsibility to clean it up. The Appellant testified that the Adult Services worker did not try to call or visit. The Appellant said he only wanted his mother as a chore provider.

It is important for the Appellant and his chore provider to understand that blaming the living condition mess is not relevant to this case. Instead, the Appellant bears the burden of proving by a preponderance of evidence that the enrolled chore provider performed the tasks she was paid for and performed the tasks that she told the Department in writing that she performed. It is also important for the Appellant and his chore provider to understand that it is fraud to not perform each minute of the tasks that the state paid for.

The testimony and documents in this case demonstrate that the Department acted properly when suspending the Appellant from HHS program payments. The State Police Trooper observed the Appellant cooking on his own, with no one home except his mother who was in bed and was not roused from bed even though a Michigan State Police Trooper officially reported that he entered the room, searched it and observed her in bed. Appellant's mother/chore provider signed a chore log swearing she cooked for Appellant each day but the evidence demonstrates that the Appellant is capable of cooking on the stove by himself and in fact his mother does not cook for him at all times as she swore to the Department. (Exhibit 3).

The State Police Trooper and the Adult Services worker reported observing piles of trash, feces and dirty laundry and which existed for several months and continued to exist even one (1) month after the sister had moved. Appellant's mother chore provider signed a log swearing she performed light housekeeping each day and laundry two (2) times per week for Appellant but the overwhelming credible evidence demonstrates that Appellant's mother did not perform housekeeping each day and laundry two (2) times per week as she swore to the Department. (Exhibit 3). The evidence supports the Department's position that Appellant's mother/chore provider is not qualified to be an enrolled HHS chore provider; including her physical condition which she reported to the Adult Services worker made her dizzy and prevented her from being roused from bed. It is implausible that the State Police Trooper did not observe the mother as is Appellant's position; the Trooper's paramount purpose was to search for a fugitive and in performance of his duty the State Police Trooper thoroughly checked all floors and areas of the home and all persons found there, and sought information from all persons located within.

The Adult Services worker indicated the Appellant's case might be referred to the Office of Inspector General (OIG) for a fraud investigation. The Department may seek recoupment for any HHS payments made for the period of time the HHS services were not provided as reported.

For the above reasons, it is decided that the Department acted properly and in accordance with policy when it suspended Appellant's HHS services.

## **DECISION AND ORDER**

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

[REDACTED]  
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Decision and Order

**IT IS THEREFORE ORDERED THAT:**

The Department's decision is AFFIRMED.

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Lisa K. Gigliotti  
Administrative Law Judge  
for Janet Olszewski, Director  
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 06/04/2010

**\*\*\* NOTICE \*\*\***

SOAHR 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. SOAHR 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.