

**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. 2010-40515 HHS

██████████

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ) 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 ██████████. ██████████, former HHS provider, appeared on the Appellant's behalf. ██████████ appeared and testified. ██████████ Appeals and Review Officer, represented the Department. ██████████, Adult Services Worker, was present as a Department witness.

ISSUE

Did the Department properly terminate Home Help Services payments 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. The Appellant is a ██████████ Medicaid beneficiary who was receiving Adult Home Help Services.
2. The Appellant suffers from polyarthritis, chronic back pain, hypertension, diabetes, degenerative disc disease, respiratory infection/pneumonia, and deep vein thrombosis. (Exhibit 1, page 22)
3. ██████████ was the Appellant's HHS chore provider. (Exhibit 1, pages 20-21)

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4. In [REDACTED] the Adult Services Worker (ASW) discussed domestic violence concerns with the Appellant and [REDACTED] based upon information the police provided to the Department. (ASW Testimony and Exhibit 1, page 17)
5. On [REDACTED], a police officer called the Department and reported that F [REDACTED] had been arrested for domestic violence against the Appellant. (Exhibit 1, page 17)
6. On [REDACTED] the Department issued an Advance Negative Action Notice to the Appellant indicating that her Home Help Services payments would be suspended effective [REDACTED]. The notice indicated that because [REDACTED] assaulted the Appellant and was arrested, he was no longer eligible to be the Appellant's chore provider, and someone else should be selected. (Exhibit 1, page 7)
7. Other HHS providers have been enrolled for the Appellant and monthly payments resumed effective [REDACTED]. (Exhibit 1, pages 20-21)
8. A Request for Hearing was filed on the Appellant's behalf on [REDACTED], [REDACTED], but there was no authorization for [REDACTED] to represent the Appellant. The hearing request was re-submitted on [REDACTED], with the Appellant's signature and additional documentation. (Exhibit 1, pages 3-11)

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 physician and may be provided by individuals or by private or public agencies.

Adult Services Manual (ASM 363, 9-1-08), page 15 addresses the issue of provider selection:

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

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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.


Adult Services Manual (ASM) 363, 9-1-2008, Page 15 of 24.

In the present case, the ASW testified that the Appellant's HHS payments were suspended ██████████, based upon a determination that the enrolled HHS provider, ██████████, was no longer eligible. The ASW explained that there had been past telephone calls from police raising domestic violence concerns, which were discussed with the Appellant and ██████████ in ██████████. (ASW Testimony and Exhibit 1, page 17) Then in ██████████ the police called the Department and reported that ██████████ had been arrested for domestic violence against the Appellant. (Exhibit 1, page 17)

The provider criteria an ASW uses to determine provider qualification includes consideration of the provider's age, ability, physical health, knowledge, personal qualities, and training. (Adult Services Manual (ASM) 363, 9-1-2008, Page 16 of 24) Because of the domestic violence concerns, the ASW determined ██████████ was no longer qualified to be a chore provider for the Appellant. The ASW noted that new providers were selected and HHS services continued. (See also Exhibit 1, pages 18 and 20-21)

The Appellant disagrees with the determination that ██████████ is no longer qualified to be a HHS provider and testified that he was arrested because they both lied to the police about him hitting her. The Appellant explained that she had been very depressed due to multiple events and stressors and stated that she suffers from panic attacks. The Appellant was very upset that day, and to protect her from going to jail, they lied about the assault. (Appellant and ██████████ Testimony) The Appellant has also provided documentation that the no contact order preventing ██████████ from having contact with her was removed by the district court judge. (Exhibit 1, page 10) Additional documentation includes ██████████ Sentence for a Disorderly-creating a disturbance conviction. (Exhibit 1, page 11)

Based on the information available to the ASW on ██████████, the Department properly suspended the Appellant's HHS case until a new provider could be enrolled. ██████████ arrest for domestic violence made him immediately unavailable to provide services to the Appellant. Further, the history of domestic violence concerns supports the ASW's determination that he is not qualified to provide HHS services to the Appellant.


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DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds the Department properly suspended home help assistance payments to the Appellant.

IT IS THEREFORE ORDERED that:

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

Colleen Lack
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc:



Date Mailed: 10/18/2010

***** 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.