

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

P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 334-9505

IN THE MATTER OF:

_____,
Appellant

Docket No. 2010-44964 HHS
Case 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 hearing was held on _____, _____, appeared on behalf of the Appellant. _____ was present. _____, appeared as a witness for the Appellant.

_____, represented the Department. _____, appeared as a witness for the Department.

ISSUE

Did the Department properly deny Appellant Home Help Services because she has a responsible relative to provide care to her?

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 _____ woman.
2. Appellant is legally married to her husband, _____. (Testimony of Appellant and her son).
3. Appellant's husband is able and available to provide care to Appellant and is Appellant's responsible relative. (Exhibit 1, pages 4-7).
4. In or before _____ Appellant became a Medicaid beneficiary. (Exhibit 1, pages 6, 7, 8).
5. On or before _____, the Appellant requested Home Help Services from

the Department of Human Services (Department). (Exhibit 1, pages 4-7).

6. On ██████████, an in-home initial assessment was conducted in the Appellant's home. Appellant's husband was present in Appellant's home during the assessment and was observed by the Adult Services Worker to be washing dishes in the kitchen. (Exhibit 1, page 6).
7. At the initial in-home assessment the Adult Services Worker was informed by the Appellant that she was married to her husband. (Exhibit 1, pages 4-7).
8. On ██████████, the Department sent an Adequate Action Notice notifying Appellant that her Home Help Services was denied because her husband is her responsible relative. (Exhibit 1, pages 4-7).
9. On ██████████, the Department received a request for hearing from the Appellant. (Exhibit 1, page 3). On ██████████, the request was forwarded to the State Office of Administrative Hearings and Rules.

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.

Adult Services Manual (ASM 9-1-2008) 363, explicitly addresses, in more than one section, a caseworker's prohibition from authorizing home health services if there is an available responsible relative able to assist with personal services or if the services have been provided free of charge. In pertinent part:

Service Plan Development

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

- The availability or ability of a responsible relative or legal dependent of the customer to perform the tasks the customer does not perform. Authorize HHS **only** for those services or times which the responsible relative/legal dependent is unavailable or unable to provide.

Note: 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.

- Do not authorize HHS payments to a responsible relative or legal dependent of the customer.
(ASM page 5 of 24; Exhibit 1, page 11).

Services Not Covered By Home Help Services

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

- Services for which a responsible relative is able and available to provide;
- Services provided free of charge.
(ASM page 14 of 24 Exhibit 1, page 9).

Adult Services Glossary (ASG 12-1-2007), page 5 of 6 defines a responsible relative as:

1. A person's spouse
2. A parent of an unmarried child under age 18

(Exhibit 1, page 9).

The Department must implement its programs in accordance with Department policies. Adult Services Manual 363 prohibits a caseworker from authorizing Home Health Services if there is an available responsible relative, in this case the Appellant's husband, able to assist with personal services or if the services have been provided free of charge.

At hearing the Adult Services Worker testified that the Appellant informed her during the in-home assessment that she was and continues to be legally married. The Adult Services Worker stated that while she was in the Appellant's home she observed the Appellant's husband washing dishes in the kitchen. (Exhibit 1, page 6).

At hearing the Appellant testified that she was legally married. At hearing the Appellant's son testified that his mother was and continues to be legally married.

Testimony during the hearing established that the Appellant was legally married. The Adult Services Worker testified that she informed the Appellant during the in-home assessment that the Appellant could provide documentation that she was not legally married or that her husband was not available or able to provide care to her, but the Appellant provided no such

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documentation.

The Appellant has the burden of proving by a preponderance of credible evidence that she was not married or that her husband was unavailable or unable to assist her. The Appellant failed to meet her burden of proof.

The Department provided a preponderance of evidence in this case that Appellant is married to her husband and her husband is able and available to help her, and therefore its decision to deny Appellant Home Help Services eligibility was in accordance with policy and proper.

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 Home Help Services eligibility.

IT IS THEREFORE ORDERED that:

Department's decision is **AFFIRMED**.

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

cc:

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Date Mailed: 8/30/2010

***** 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.