

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH
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IN THE MATTER OF:

██████████,

Appellant.

_____ /

Docket No. 2011-30656 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 telephonic hearing was held on ██████████. ██████████, Appellant, appeared on his own behalf. ██████████, represented the Department of Community Health. ██████████, appeared as a witness for the Department.

ISSUE

Did the Department properly terminate Appellant's 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 man and Medicaid beneficiary. (Exhibit 1).
2. The Appellant has been diagnosed with Lung Cancer, Chronic Obstructive Pulmonary Disease (COPD), Prostate Cancer, and a Brain Tumor. (Exhibit 1, p. 15).
3. Appellant is legally married to his wife, ██████████. (Testimony of Appellant).
4. On ██████████, an Adult Services Worker conducted a home assessment with the Appellant for continuing eligibility for Home Help Services. The Appellant, his son and chore provider, his sister ██████████, and his wife were present. (Exhibit 1, pages 13).
5. As a result of the information gathered from the time of the assessment, the worker determined that provider logs and the DHS 4676 form were missing

from Appellant's file, and that Appellant's wife was living in the home again. (Exhibit 1, page 13).

6. On [REDACTED], the Department sent an Advance Negative Action Notice notifying Appellant that his Home Help Services would be suspended effective [REDACTED]. The reason given was that provider logs and the DHS 4676 form were missing and needed to be provided. The Notice also stated that a medical needs form needed to be completed for Appellant's wife. (Exhibit 1, pages 5-8).
7. Appellant and his wife failed to submit a completed DHS-54A form documenting or verifying his wife's disabilities to the Department. (Testimony of Appellant and [REDACTED]).
8. On [REDACTED], the Department sent an Advance Negative Action Notice notifying Appellant that his Home Help Services would be terminated effective [REDACTED]. The reason given was that, because she never provided a medical needs form, [REDACTED] was responsible for her husband's care. (Exhibit 1, pages 9-11).
9. On [REDACTED], the Department received Appellant's Request for Hearing. (Exhibit 1, page 4).

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.

Adult Services Manual (ASM) 363 (9-1-08) 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 the pertinent parts, ASW 363 provides:

Service Plan Development

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.

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 on the DHS-54A.

- Do **not** authorize HHS payments to a responsible relative or legal dependent of the client.

(ASW 363, pages 4-5 of 24)

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;

(ASW 363, pages 14-15 of 24)

On ██████████, the ██████████ completed a home visit as part of an HHS comprehensive assessment in accordance with Department policy. As stated in the worker's testimony, she initiated the home visit after receiving an anonymous tip that Appellant was not receiving care. The worker also testified that, during this visit, she learned that Appellant is married and his wife was staying with him in the home. The worker then determined that the Appellant no longer qualified for Home Help Services payments unless he could demonstrate that his wife was unable or unavailable to provide such services. The worker further testified that she provided Appellant and Appellant's wife with a DHS-54A form so

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could document or verify that she had a disability preventing her from providing the services herself. The worker also testified that she sent a second DHS-54A form on and that, after Appellant failed to return a completed DHS-54A form by as required, she sent an Advance Negative Action Notice notifying Appellant that his Home Help Services would be terminated effective .

The Appellant disagrees with the determination and testified that, while he is still legally married to her, his wife does not live with him and she only stays over at his house three nights a week. Appellant also testified that his wife is disabled and unable to care for him. However, Appellant does acknowledge that he and his wife failed to submit a completed DHS-54A form documenting or verifying his wife's disabilities to the Department.

In light of the above evidence and policies, the Department properly considered the availability and ability of the Appellant's wife to provide care for the Appellant. As discussed above, the Adult Services Manual expressly states that services which a responsible relative is able and available to provide are not covered by Home Help Services and the Department cannot authorize payments for such services. ASM 363, pages 5, 14 of 24. The Adult Services Glossary defines a responsible relative as a person's spouse or a parent of an unmarried child under age 18. Adult Services Glossary (12-1-07), page 5 of 6. It is undisputed that Appellant is still legally married to his wife in this case and, accordingly, she is a responsible relative.

Given that was a responsible relative at the time of the termination decision, the Department could only authorize payments for Home Help Services if she was unavailable or unable to provide the services for husband. As defined in the Adult Services Manual, "unavailable" means "absence from the home, for employment or other legitimate reasons." ASM 363, page 5 of 24. Here, even accepting that was only staying with Appellant three nights a week, their living arrangements were by choice and they were still legally married. is not employed and Appellant offered no other legitimate reason why she would be unavailable.

Appellant does argue that his wife is disabled and therefore unable to provide services for him. As defined in the Adult Services Manual, "unable" means that "the responsible person has disabilities of his/her own which prevent caregiving." ASM 363, page 5 of 24. Additionally, to demonstrate that a spouse is unable to provide services, his or her "disabilities must be documented/verified by a medical professional on the DHS-54A." ASM 363, page 5 of 24. In this case, while Appellant testified generally regarding his wife's disabilities, he failed to provide the necessary DHS-54A form documenting or verifying her disabilities, despite numerous opportunities to do so. The relevant policies are clear on this issue and the Department did not have any proper documentation that the Appellant's wife was disabled or otherwise unavailable to assist the Appellant.

is a responsible relative who is both able and available to provide Home Help Services to Appellant. Therefore, the Department cannot authorize payments for such services and its decision must be affirmed. If, in the future, Appellant is able to provide a DHS-54A form documenting or verifying that his wife has disabilities of her own which prevent caregiving, then Appellant could reapply for Home Help Services.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department was proper to terminate the Home Help Services given the information available at the time of the action.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

Steven J. Kibit
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:



Date Mailed: 6/13/2011

***** NOTICE *****

The Michigan Administrative Hearing System 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 Michigan Administrative Hearing System 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.