

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF:

██████████,

Appellant.

Docket No. 2011-30687 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 ██████████. Appellant appeared on his own behalf, but he also requested at the start of the hearing that ██████████ represent him. ██████████ appeared and testified on Appellant's behalf. ██████████ also testified on Appellant's behalf. ██████████, Appeals Review Officer, represented the Department of Community Health. ██████████, Adult Services Specialist, and ██████████, Acting Adult Services Supervisor, from the ██████████ DHS-██████████ Office appeared as witnesses for the Department.

ISSUE

Did the Department properly deny Appellant's application for 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 an ██████ year-old Medicaid beneficiary.
2. In ██████████, Appellant applied for HHS. (Exhibit 1, pages 7-10).
3. At that time, Appellant was living at ██████████. ██████████ is owned by ██████████ and it provides a home for the formerly homeless. (Testimony of ██████████).
4. Appellant came to live at ██████████ after being released from prison and contacted by ██████████, who spoke with Appellant, while Appellant was still incarcerated, at the request of the Michigan Department of Corrections. (Testimony of Appellant; Testimony of ██████████).
5. On ██████████, AS Specialist ██████████ conducted a home visit and

comprehensive assessment as part of the application process. (Exhibit 1, pages 7-10).

6. During that home visit, AS Specialist ██████ learned that the single-family home Appellant lives in, with four others, is owned by ██████ and that the proposed HHS care providers are employees of ██████ (Testimony of AS Specialist ██████; Exhibit 1, page 11).
7. Based on the information obtained during the home visit, AS Specialist ██████ determined that the application for HHS must be denied because payments for HHS cannot be made to the owner of the home where the client receives room and board or any employee of that owner. (Testimony of AS Specialist ██████; Exhibit 1, page 11).
8. On ██████, AS Specialist ██████ issued an Adequate Negative Action Notice to Appellant indicating that Appellant's application for HHS was denied. (Exhibit 1, pages 5-6).
9. On ██████, 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 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 363 (9-1-08) (hereinafter "ASM 363") and L-Letter 97-278 address the question of whether a client needing 24-hour supervision must be in a licensed adult foster care home or a nursing home rather than receiving HHS:

Supported Independent Living Programs (SIP)

Clients in supported independent living program homes (SIP) may be eligible for HHS payments. See L-Letter 97-278.

(ASM 363, page 11 of 24)

- Q. Some of the consumers of CMH Services in their own homes appear to need 24-hour supervision. Shouldn't they be in an adult foster care home or nursing home?

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- A. No, not necessarily. As long as the consumer lives in their own home and contracts separately for the care to be brought into their home or apartment, it is not a setting that needs to be licensed. However, it is reasonable to ask the parent, guardian or CMH case manager about how supervision is being addressed so we don't contribute to protective service situations.

(L-Letter 97-278, page 2 of 2)


As stated in that policy/letter, even if Appellant does require 24-hour personal care, Appellant could still be entitled to unlicensed HHS care so long as he lives in his own home and contracts separately for the care to be brought into his home. In this case, however, there clearly was a relationship between ██████████, the owner of the home, and the proposed care providers that precludes an award of HHS.

██████████ at first denied any relationship with the proposed care providers, but later the exact nature of the relationship was made clear. As ██████████ testified to during the hearing, she owns ██████████, the home where Appellant and others live, and she employs a number of workers at ██████████. (Testimony of ██████████). Moreover, ██████████ also testified that, if HHS were granted, either ██████████ or her employees would provide the care. (Testimony of ██████████). ██████████ did testify at one point that Appellant could choose his own provider, but she also testified later that she would have to approve his choice before she would let the provider into ██████████. (Testimony of ██████████).

Given the fact that ██████████ owns the home Appellant lives in and would be supervising/paying his care providers or providing the care herself, Appellant would not be living in his own home or contracting separately for his room/board and HHS. Accordingly, as found by the Department, HHS are inappropriate and the proposed setting needs to be a licensed adult foster care home or nursing home.

Additionally, as noted by the Department, such a live-in arrangement for Appellant appears to constitute an adult foster care home and such a home must be licensed. As defined by statute, "Foster care" means "the provision of supervision, personal care, and protection in addition to room and board, for 24 hours a day, 5 or more days a week, and for 2 or more consecutive weeks for compensation." M.C.L. § 400.704(7). Here, while she denies that ██████████ is an adult foster care home on the basis that not all of its residents require care, ██████████ acknowledges that Appellant requires 24-hour a day care and that he also receives room and board at ██████████. Given those circumstances, an adult foster care program is more appropriate here than the separate program of HHS, which provided to enable functionally limited individuals to live independently and receive care in the least restrictive, preferred settings. Moreover, the State of Michigan also requires that all adult foster care homes must be licensed and it subjects them to a number of other requirements. See M.C.L. § 400.713 *et seq.* ██████████ is not a licensed adult foster care home. (Testimony of ██████████).

Given the above circumstances, Appellant's proposed living arrangement and receipt of


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HHS goes against policy and the Department was correct to deny his application for HHS.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

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

cc: 

Date Mailed: 8/16/2011

***** 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 March 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.