

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

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IN THE MATTER OF:

██████████,

Appellant.

Docket No. 2011-32617 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 her own behalf. ██████████, represented the Department of Community Health. ██████████ Appellant's Adult Services Worker (ASW) at the ██████████ DHS Office, and ██████████ Appellant's chore provider, appeared as witnesses 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 Medicaid beneficiary. (Exhibit 1, page 16).
2. The Appellant has been diagnosed with osteoarthritis, bipolar disorder, anxiety, diabetes mellitus type 2, torn meniscus in left knee, hyperkeratosis lenticularis perstans, chronic obstructive pulmonary disease (COPD), and emphysema. (Exhibit 1, page 22).
3. Appellant had been receiving 20 hours and 51 minutes of HHS per month, with a care cost of ██████ per month. (Exhibit 1, page 18). The HHS were allocated for assistance with housework, laundry, and meal preparation/cleanup. (Exhibit 1, pages 18-19).
4. On ██████████, Chore Provider ██████████ advised ASW ██████████ that Appellant told ██████████ that Appellant's husband was living with Appellant. (Testimony of ██████████; Testimony of ASW ██████████).

5. Appellant is legally married to her husband, ██████████. (Testimony of Appellant).
6. On ██████████, the Department sent an Advance Negative Action Notice notifying Appellant that her Home Help Services would be terminated effective ██████████. The reason given was that she could not receive HHS because her husband lived in her home with her. (Exhibit 1, pages 8-14).
7. On ██████████, the Department received Appellant's Request for Hearing. (Exhibit 1, page 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 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 363 (9-1-08) (hereinafter "ASM 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. In the pertinent parts, ASM 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.

(ASM 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;

(ASM 363, pages 14-15 of 24)

On ██████████, ASW ██████████ received information from Appellant's chore provider that Appellant's husband was living in the home. The worker then determined that Appellant no longer qualified for HHS because Appellant's husband was able and available to provide such services. Appellant disagrees with the determination and testified that, while she is still legally married to him, her husband does not live with her and only spends the occasional night there. Appellant also testified that her husband comes over often to pick up his mail and to help her with some daily activities, such as showering or getting in-and-out of the bathtub. Appellant further testified that her husband is employed and does not have the time to assist her in the tasks she is receiving HHS for.

In light of the above evidence and policies, the Department properly considered the availability and ability of the Appellant's husband to provide care for Appellant. As discussed above, ASM 63 expressly states that services which a responsible relative is able and available to provide are not covered by Home Help Services and the

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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 her husband in this case and, accordingly, he is a responsible relative.

Given that [REDACTED] was a responsible relative at the time of the termination decision, the Department could only authorize payments for HHS if he was unavailable or unable to provide the services for Appellant. As defined in the ASM 363, "unable" means "the responsible person has disabilities of his/her own which prevent caregiving" while "unavailable" means "absence from the home, for employment or other legitimate reasons." ASM 363, page 5 of 24.

Here, Appellant acknowledges that her husband is not disabled and only argues that he is unavailable to provide services for Appellant. However, even accepting that Appellant and [REDACTED] lived apart, their living arrangements were by choice and they were still legally married. Moreover, while [REDACTED] is employed, he already provides significant, daily services to his wife and the specific tasks HHS had been allocated for are not time-sensitive.

[REDACTED] is therefore a responsible relative who is both able and available to provide Home Help Services to Appellant. Consequently, the Department cannot authorize payments for such services and its decision must be affirmed.

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 Appellant's 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: [REDACTED]

Date Mailed: 7/11/2011

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***** 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.