

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

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IN THE MATTER OF:

██████████,

Appellant.

Docket No. 2011-37086 HHS
Case No. 1032963834

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to M.C.L. § 400.9 and 42 C.F.R. § 431.200 *et seq.*, upon the Appellant's request for a hearing.

After due notice, a hearing was held on August 18, 2011. Appellant appeared on his own behalf. ██████████, Appeals Review Officer, represented the Department of Community Health. ██████████, Adult Services Supervisor, and ██████████, Adult Services Specialist, from the ██████████ DHS-District ██████████ 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 a ██████ year-old Medicaid beneficiary.
2. The Appellant has been diagnosed with congestive heart failure (CHF), obesity, hypertension (HTN), left leg edema, and arthritis. (Exhibit 1, page 13).
3. In ██████████, Appellant applied for HHS. (Exhibit 1, page 8).
4. As part of the application and assessment process, Adult Services Specialist ██████████ conducted a home visit on ██████████. (Testimony of ██████████; Exhibit 1, pages 9-11).
5. Appellant is legally married to his wife ██████████ and they live together in their home. (Testimony of Appellant; Exhibit 1, page 12).

6. Following that home visit, Adult Services Specialist ██████████ determined that HHS should be denied because, while both Appellant and his wife required assistance in certain areas, Appellant's wife is able to assist Appellant in tasks he cannot perform and he is able to assist her in tasks she cannot perform. (Testimony of Ferguson; Exhibit 1, pages 9-11).
7. On ██████████, the Department sent an Adequate Negative Action Notice notifying Appellant that his HHS application would be denied because his spouse is able and available to assist him. (Exhibit 1, pages 6-8).
8. On ██████████, the Department received Appellant's Request for Hearing. In that request, Appellant argues that he needs help with daily activities and that his wife has physical and mental conditions that prevent her from helping him. (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 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)

In light of the above policy, the Department properly considered the availability and ability of the Appellant's wife to provide care for Appellant. As discussed above, ASM 363 expressly states that services which a responsible relative is able and available to provide are not covered by HHS and that 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 ██████████ is a responsible relative, the Department can only authorize payments for HHS if she 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, the only dispute is whether ██████████ is able to provide the necessary assistance to Appellant. As found by AS Specialist ██████████ and undisputed by Appellant, Appellant only requires assistance with bathing, dressing, housework, laundry, shopping, and meal preparation. (Testimony of Appellant; Exhibit 1, page 14). Those tasks will be address in turn and, for the reasons discussed below, this Administrative Law Judges finds that the Department’s denial should be affirmed.

Dressing

With respect to dressing both Appellant and AS Specialist ██████████ agree that the only assistance Appellant requires is in putting his socks and shoes on. (Testimony of Appellant; Testimony of ██████████). ██████████ also noted that Appellant’s wife can assist Appellant in putting on his socks and shoes, and that Appellant told her that he reclines back in a chair so that his wife can put them on. (Exhibit 1, page 9; Testimony of ██████████). Appellant testified that his wife helps occasionally. (Testimony of Appellant). Appellant’s testimony did confirm that he told ██████████ about how he and his wife use the chair when dressing him. (Testimony of Appellant).

Given the agreement between AS Specialist ██████████ determination and much of the Appellant’s testimony, this Administrative Law Judge finds that the Department’s decision regarding dressing assistance is affirmed. Appellant and ██████████ discussed the task and Appellant both stated that his wife assists him and discussed how they use a recliner during that assistance.

Bathing/Housework

With respect to bathing, it is undisputed that Appellant can generally bathe himself, but that he requires some assistance in washing. (Testimony of Appellant; Testimony of ██████████; Exhibit 1, page 10). AS Specialist ██████████ also reported in her notes and testified during the hearing that Appellant told her his wife can assist him. (Testimony of Appellant; Exhibit 1, page 11). Appellant testified that his wife only sometimes assists him and it depends on how well her arms are feeling. (Testimony of Appellant).

Regarding housework, AS Specialist ██████████ found that Appellant cannot bend, and therefore cannot vacuum, mop or clean the toilet. (Exhibit 1, page 10). ██████████ also noted and testified that Appellant could do other light housework, including cleaning the sink, and that his wife said she could do the rest of the housework. (Testimony of Ferguson; Exhibit 1, page 10). Appellant does not dispute AS Specialist ██████████ findings regarding his needs, but he did testify that his wife is not really able to do the rest of the housework because her arms start to hurt. (Testimony of Appellant).

Given the above evidence, the issues regarding the tasks of bathing and housework are the same. In both cases, AS Specialist ██████████ testified that she was told by either Appellant or his wife that Appellant's wife could assist Appellant with his needs while Appellant testified that his wife is unable to assist in the task because of problems with her arms. The medical needs form for ██████████ does identify her as having been diagnosed with conditions such as arthritis and carpal tunnel syndrome, which could indicate problems with her arms. (Exhibit 1, page 15). However, Appellant provides no other evidence in support of his claims. Additionally, AS Specialist ██████████ extensive notes and testimony are credible on the issue of whether she was told Appellant's wife can assist him. Given that testimony and notes, in addition to the lack of evidence put forth by Appellant, Appellant failed to meet his burden of proving beyond a preponderance of the evidence that the Department erred in finding that his wife could assist him with the tasks of bathing and housework. Accordingly, the Department's decisions with respect to those tasks are affirmed.

Shopping/Meal Preparation

With respect to shopping, AS Specialist ██████████ found that Appellant can mostly shop by himself, using a motorized cart and his cane, and that Appellant reported that his wife could assist him with shopping to the extent he could not do it himself. (Testimony of ██████████; Exhibit 1, pages 10-11). Appellant, on the other hand, testified that his wife cannot assist him because of her memory problems and that he has to watch her while they are shopping. (Testimony of Appellant).

Regarding meal preparation, it is undisputed that Appellant requires assistance because, while he can use his hands and prepare food, he cannot stand over the stove. (Testimony of Appellant; Exhibit 1, page 10). AS Specialist ██████████ also noted and testified that Appellant's wife can cook at the stove if the food is cut up and ready to be cooked. (Exhibit 1, page 11; Testimony of ██████████). Appellant testified that his wife cannot assist him because of her mental problems. (Testimony of Appellant). Appellant also testified that someone else has been helping them and that Appellant may have to look into other types of assistance, such as Meals on Wheels. (Testimony of Appellant).

Therefore, the disputes over assistance with shopping and meal preparation are the same. With both tasks, AS Specialist ██████████ testified that she was told by either Appellant or his wife that Appellant's wife could assist Appellant with his needs while Appellant testified that his wife is unable to assist in the task because of a memory or mental impairment. Appellant's wife's medical needs form does report that she has a memory impairment (Exhibit 1, page 15) and ██████████ testified she and Appellant discussed the 2010 car accident that Appellant asserts led to that problem (Testimony of ██████████). However, there is no other medical or documentary evidence in support of Appellant's claims and, as discussed above, this Administrative Law Judge finds ██████████ to be credible with respect to what she was told during the home visit. Appellant has not met his burden of proving beyond a preponderance of the evidence that the Department erred in finding that his wife could assist him with the tasks of shopping and meal preparation. The Department's decisions with respect to those tasks are therefore sustained.

Laundry

In discussing laundry, AS Specialist ██████████ testified and wrote in her notes that, while Appellant can fold clothes, he cannot carry them to the laundry room or bend down to use the washing machine or dryer. (Testimony of ██████████; Exhibit 1, pages 10-11). However, ██████████ also determined that HHS were not required for assistance with laundry because Appellant's wife is able to do the laundry. (Exhibit 1, pages 10-11; Testimony of ██████████). AS Specialist ██████████ also noted that, to the extent Appellant had difficulty carrying the clothes, she can use a rolling basket and take an elevator to the laundry room. (Testimony of ██████████; Exhibit 1, pages 10-11). Appellant, on the other hand, testified that his wife has never done laundry and that ██████████ never discussed the task of laundry with them during the home visit. (Testimony of Appellant). Appellant also testified that his wife is unable to do laundry because of her problems with her arms and her memory. (Testimony of Appellant).

For the same reasons discussed above with respect to the other tasks, this Administrative Law Judge finds that Appellant has not met his burden of proving beyond a preponderance of the evidence that the Department erred in finding that his wife could assist him with laundry. While the medical needs form for Appellant's wife contains diagnoses of arthritis, carpal tunnel syndrome and memory impairment, Appellant has no other evidence and AS Specialist ██████████ extensive notes and testimony are credible on the issue of what she was told during the home visit regarding Appellant's wife's ability to assist Appellant.

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's application for Home Help Services given the information available at the time of the action.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

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

cc:

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Decision and Order

Date Mailed: 8/31/2011

***** 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.