

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

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IN THE MATTER OF:

██████████,

Appellant.

Docket No. 2013-13584 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.*, and upon the Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. Appellant's son ██████████ appeared and testified on behalf of the Appellant. ██████████, Appeals Review Officer, represented the Department of Community Health. ██████████, Adult Services Supervisor, and ██████████, Adult Services Worker (ASW), from the Wayne County DHS-District 45 Office also appeared for the Department.

ISSUE

Did the Department properly deny Appellant's request 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 (DOB ██████████ per Bridges) who has been diagnosed with CAD, seizures, DM and back pain. (Exhibit A, p. 12).
2. On ██████████, Appellant applied for HHS. On ██████████ Department of Human Services (DHS) received a DHS-54A certifying Appellant's medical needs. (Exhibit A, pp. 11-12).
3. On ██████████, DHS received a DHS-54A regarding the Appellant's ██████████ indicating that she had no medical need for assistance, but indicating she was unable to care for the Appellant. (Exhibit A, pp. 9-10).
4. On ██████████, ASW ██████████ did a home visit to conduct a routine assessment of Appellant's eligibility for HHS. Based on the comprehensive assessment, ASW ██████████ determined that the tasks

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Appellant required assistance with, his ██████████ was able to complete for him. She is able to assist Appellant with bathing and dressing. Appellant's ██████████ is able to complete all IADLs, accordingly, Appellant was found not eligible for HHS due to the policy of a responsible relative being available and able to complete the ADLs and IADLs for the Appellant. (Exhibit A, p. 9; and testimony).

5. On ██████████, the Department sent a written notice notifying Appellant that his request for HHS was being denied effective ██████████ because a responsible relative, his ██████████ was able and available to perform the tasks for the Appellant. (Exhibit 1, pp. 6-11).
6. On ██████████, the Michigan Administrative Hearing System (MAHS) received a request for hearing filed by Appellant. (Exhibit A, p. 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.

The Adult Services Manuals used by the Department outline the applicable policy in this case and, in a number of places, they explicitly address a caseworker's prohibition from authorizing home health services if there is an available responsible relative able to assist with personal services.

For example, Adult Services Manual 101 (11-1-2011) (hereinafter "ASM 101") expressly provides:

Services not Covered by Home Help Services

Home Help Services must **not** be approved for the following:

- Services for which a responsible relative is **able** and **available** to provide (such as house cleaning, laundry or shopping). [ASM 101, page 3 of 4.]

In the pertinent part, Adult Services Manual 135 (11-1-2011) (hereinafter "ASM 135") also provides:

PROVIDER SELECTION

The client has the right to choose the Home Help Provider(s). As the employer of the provider, the client has the right to hire and fire providers to meet individual personal care service needs. Home Help Services is a benefit to the client and earnings for the provider.

The determination of provider criteria is the responsibility of the Adult Services Specialist.

Home Help Services **cannot** be paid to:

- A spouse caring for a spouse or a parent caring for an unmarried child under 18 (responsible relative).

Note: Couples who are separated must provide verification that they are no longer residing in the same home (unavailable). Verification may include their driver's license, rent receipt or utility bill reflecting their separate mailing address. A spouse who is legally separated from a spouse cannot be paid to provide home help. [ASM 135, page 1 of 7.]

Similarly, Adult Services Manual 120 (11-1-2011) (hereinafter "ASM 120") provides:

Responsible Relatives

Activities of Daily Living may be approved when the responsible relative is **unavailable** or **unable** to provide these services.

Note: Unavailable means absence from the home for an extended period due to employment, school or other legitimate reasons. The responsible relative must provide a work or school schedule to verify they are unavailable to provide care. **Unable** means the responsible person has disabilities of their own which prevent them from providing care. These disabilities must be documented/verified by a medical professional on the DHS-54A, Medical Needs form.

Do **not** approve shopping, laundry, or light housecleaning, when a responsible relative of the client resides in the home, **unless** they are unavailable or unable to provide these services. Document findings in the general narrative in ASCAP. [ASM 120, pages 4-5 of 5.]

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In light of the above policy, the Department properly considered the availability and ability of the Appellant's ██████ to provide care for Appellant. As discussed above, services which a responsible relative is able and available to provide are not covered by HHS and the Department cannot authorize payments for such services.

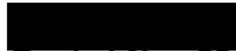
The Adult Services Glossary defines a responsible relative as a person's spouse or a parent of an unmarried child under age 18. Adult Services Glossary (12-1-07), page 5 of 6. It is undisputed that Appellant is legally married to his ██████ in this case and, accordingly, she is a responsible relative.

Given that Appellant's ██████ is a responsible relative the Department can only authorize payments for HHS if the ██████ was unavailable or unable to provide the services for Appellant. As defined in the ASM 120, "unable" means "the responsible person has disabilities of their own which prevent them from providing care. These disabilities must be documented/verified by a medical professional on the DHS-54A, Medical Needs form." "Unavailable" means "absence from the home, for employment or other legitimate reasons."

Here, the only dispute is whether Appellant is able to provide the necessary assistance to Appellant. However, while the Appellant's ██████ testified generally regarding the ██████ alleged inability to provide care for the Appellant, the DHS-54A form that was submitted regarding the ██████ alleged inability to provide the necessary assistance to Appellant did not certify that she had disabilities of her own which prevent her from providing care. The relevant policies are clear on this issue and the Department did not have documentation that the Appellant's wife was disabled or otherwise unavailable to assist the Appellant.

Appellant's ██████ 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.

At the hearing, Appellant's ██████ did testify that his ██████ has a hard time providing the necessary care. He stated there are ██████ children in the home and she also has to care for the ██████ including cooking, doing the laundry, shopping, pretty much doing everything for the ██████ that she would be doing for the Appellant. Appellant's ██████ testified that he was ██████ years old and lives in the home with the Appellant. The ██████ stated he provides assistance to the Appellant around the home, helping him with his medications, he usually helps the Appellant take a bath, and helps him get dressed. Instead of demonstrating the spouse's disability, the ██████ testimony demonstrates that the Appellant's spouse is more than capable of providing the necessary tasks for him. According to policy, with a responsible relative able and available DHS cannot authorize HHS for the Appellant.


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The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly denied the Appellant's request for Home Help Services.

IT IS THEREFORE ORDERED THAT:

The Department's decision is **AFFIRMED**.

/s/

William D. Bond
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

cc:



Date Mailed: January 29, 2013

***** 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.