

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

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IN THE MATTER OF:

██████████,

Appellant

Docket No. 2013-17094 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 ██████████. ██████████, the Appellant, appeared on her own behalf. ██████████, Appeals Review Officer, represented the Department. ██████████, Adult Services Worker ("ASW"), and ██████████, Adult Services Supervisor, appeared as witnesses for the Department.

ISSUE

Did the Department properly terminate the Appellant's Home Help Services ("HHS") case?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. The Appellant is a Medicaid beneficiary who had been authorized for HHS.
2. On ██████████, the ASW made a visit to the Appellant's home for an annual review. This home visit was this ASW's first time meeting the Appellant. The ASW learned that the Appellant was married, but the Appellant did not know the whereabouts of her husband. The Appellant gave the ASW her husband's name and date of birth. (Exhibit 1, pages 5 and 11-12; ASW Testimony)
3. The ASW checked the Department's computer system and found that the Appellant's husband is receiving benefits at the same address as the Appellant. (Exhibit 1, pages 5 and 11-12; ASW Testimony)
4. Department policy states that HHS may not be authorized for services that a responsible relative, such as a spouse, is able and available to provide. (Adult Services Manual (ASM) 120, 5-1-2011, Page 4 of 5)

5. On [REDACTED], the Department sent the Appellant an Advance Action Notice, which informed her that effective [REDACTED] the HHS case would be terminated because according to policy, she is no longer eligible for HHS because she is married, her spouse is considered a responsible relative, and he is responsible for caring for her. (Exhibit 1, pages 7-10)
6. On [REDACTED], the Appellant's request for hearing was received by the Michigan Administrative Hearing System. (Exhibit 1, page 4)
7. The Appellant had a Personal Protection Order ("PPO") regarding her husband in effect from [REDACTED] through [REDACTED]. (Exhibit 2, page 16)
8. The Appellant has a PPO regarding her husband that went into effect [REDACTED] and remains in effect until [REDACTED]. (Exhibit 2, page 2)

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 (ASM) 120, 5-1-2012, addresses responsible relatives:

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.

Example: Mrs. Smith is in need of home help services. Her spouse is employed and is out of the home Monday thru Friday from 7a.m. to 7p.m. The specialist would not approve hours for shopping, laundry or house cleaning as Mr. Smith is responsible for these tasks.

Example: Mrs. Jones is in need of home help services. Her spouse's employment takes him out of town Monday thru Saturday. The specialist may approve hours for shopping, laundry or house cleaning.

*Adult Services Manual (ASM) 120, 5-1-2012,
Page 4 of 5*

Certain services are not covered by HHS. ASM 101 provides a listing of the services not covered by HHS.

Services not Covered by Home Help

Home help services must **not** be approved for the following:

- Supervising, monitoring, reminding, guiding, teaching or encouraging (functional assessment rank 2).
- Services provided for the benefit of others.
- Services for which a responsible relative is **able** and **available** to provide (such as house cleaning, laundry or shopping).
- Services provided by another resource at the same time (for example, hospitalization, MI-Choice Waiver).
- Transportation - See Bridges Administrative Manual (BAM) 825 for medical transportation policy and procedures.
- Money management such as power of attorney or representative payee.
- Home delivered meals.

- Adult or child day care.
- Recreational activities. (For example, accompanying and/or transporting to the movies, sporting events etc.)

Note: The above list is not all inclusive.

Adult Services Manual (ASM) 101, 11-1-2011,
Pages 3-4 of 4.
(Underline added by ALJ)

The Appellant is a Medicaid beneficiary who had been authorized for HHS. On ██████████, the ASW made a visit to the Appellant's home for an annual review. This home visit was this ASW's first time meeting the Appellant. The ASW learned that the Appellant was married, but the Appellant did not know the whereabouts of her husband. The Appellant gave the ASW her husband's name and date of birth. (Exhibit 1, pages 5 and 11-12; ASW Testimony) The ASW checked the Department's computer system and found that the Appellant's husband is receiving benefits at the same address as the Appellant. (Exhibit 1, pages 5 and 11-12; ASW Testimony) Based on the available information, the ASW determined the Appellant's HHS case must be terminated. On ██████████, the Department sent the Appellant an Advance Action Notice, which informed her that effective ██████████ the HHS case would be terminated because according to policy, she is no longer eligible for HHS because she is married, her spouse is considered a responsible relative, and he is responsible for caring for her. (Exhibit 1, pages 7-10) The ASW testified it was not until after the ██████████ termination notice was issued that the Appellant reported she had a PPO, but the Appellant did not say when the PPO went into effect.

The ASW properly considered the availability and ability of the Appellant's husband to provide care for the Appellant. 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 (ASG) Glossary 12-1-2007, Page 5 of 6. The Appellant's husband meets the definition of a responsible relative. Under Department policy, HHS for the Appellant could only be authorized for those services or times which the responsible relative is unavailable or unable to provide.

The Appellant testified that she married in ██████████ and her husband has been out of the house since ██████████. The Appellant's husband was incarcerated for a period of time, and since his release the Appellant has had PPOs against him. The Appellant was not aware her husband was using her address until she received the HHS termination notice. (Appellant Testimony) The Appellant had a PPO regarding her husband in effect from ██████████ through ██████████. (Exhibit 2, page 16) The Appellant has a PPO regarding her husband that went into effect ██████████ and remains in effect until ██████████. (Exhibit 2, page 2)

While this ALJ understands the determination the ASW made based on the information available at the time the ██████████ Advance Negative Action notice was issued,

the termination of the Appellant's HHS case can not be upheld. The Appellant provided copies of both the PPO that was in effect at the time of this determination and the current PPO, which remains in effect until [REDACTED]. The Appellant's husband can not be considered available to care for the Appellant when there is a PPO in effect. Accordingly, the termination of the Appellant's HHS case is reversed.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department improperly terminated the Appellant's HHS case based on the PPOs.

IT IS THEREFORE ORDERED THAT:

The Department's decision is REVERSED. The Appellant's HHS case shall be reinstated retroactive to the [REDACTED] effective date.

lsl

Colleen Lack
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 3/5/2013

***** 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.