

STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH
P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 373-4147

IN THE MATTER OF:

██████████,

Appellant

Docket No. 2013-21592 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 ██████████. ██████████, daughter/translator appeared on behalf of the Appellant. She had no witnesses. ██████████, RN, Appeals Review Officer, represented the Department. Her witnesses were; ██████████, ASW and ██████████, ASW supervisor.

ISSUE

Did the Department properly deny the 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. The Appellant is a ██████-year-old Medicaid-SSI beneficiary who resides at home with her spouse. (Appellant's Exhibit #1)
2. The Appellant has medical afflictions of arthritis, the sequela of Achilles tendon repair, plantar fasciitis, torn meniscus left knee, severe edema, infection in neck, limited ROM in neck and back, GERD, hypothyroidism and OA.(Department's Exhibit A, p. 6 and See Testimony)

3. The Appellant's representative testified that her father, while available, is not able to assist his spouse [the Appellant] in her ADLs and IADLs owing to his own medical condition. (See Testimony)
4. She added that her father, in an emergency, would be able to assist his spouse – although he would endure significant pain in the process. (See Testimony)
5. The Department denied HHS benefits for the Appellant because her spouse was found to be able and available to provide her necessary care in the home. (Department's Exhibit A pp. 2 and 8)
6. The Appellant was notified of the negative action by DHS 1212A Adequate Negative Action Notice denying HHS on ██████████ with an effective date of ██████████. Her further appeal rights were contained therein. (Department's Exhibit A, pp. 2 and 8)
7. The instant request for hearing was received by the Michigan Administrative Hearing System (MAHS) for the Department of Community Health on ██████████. (Appellant's Exhibit #1)

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 (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.

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.

(Emphasis supplied) Adult Service Manual (ASM) 101,
11-1-2011, pp. 3 and 4

The Adult Services Manual (120) has additional policy requirements below:

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.

(Emphasis supplied ASM 120, 11-1-2011, pp. 1-5 of 6 ied)

A responsible relative is a person's spouse – (Emphasis supplied) Glossary ASG, 12-1-2007, at page 5 of 6.

The Department's witness testified she observed that the Appellant's spouse is not employed and in his DHS 54A Medical Needs form assessment, the examining physician did not certify the spouse as disabled in his own right. However, the physician did list his afflictions as; DJD, DM, HTN and COPD. The Department's witness, [ASW ██████████] said the spouse told her at the in-home assessment that he would not be able to assist his wife in her care via hands-on assistance with ADLs or IADLs.

The Appellant's representative testified that her father suffers from the sequela of a broken hand - which occurred ██████-years ago. She added that he has "disc arthritis and suffers pain in his neck, shoulder and back" – thus obviating his ability to do most, if not all, hands-on chores.

The Appellant's representative added that her mother's [the Appellant] upper extremities "...are fine." She said the problem was the arthritis in her mother's feet which hinders her ability to ambulate or stand.

The ASW testified that the Appellant's spouse was observed by her during the in-home assessment and she saw him move unassisted – in and out of the room - several times. She observed no swelling in his hands, nor did he appear to favor either hand while managing various papers. She said he did not complain of pain.

On review today it was clear that the spouse is able bodied and available to assist in the care of his wife. His physician did not certify any disability in the spouse – at least as of ██████████.

If there has been a significant change in medical condition for the spouse that did not present itself during the comprehensive assessment – then this development should be reported to the ASW for possible reassessment.

The Appellant failed to preponderate her burden of proof.

[REDACTED]
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Decision and Order

The Department properly denied HHS because the Appellant's spouse is both able and available to provide care to his spouse.

DECISION AND ORDER

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 benefits.

IT IS THEREFORE ORDERED that:

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

Dale Malewska
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 4/5/2013

***** 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.