

**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:

Docket No. 2013-26871 HHS

Case No. [REDACTED]

[REDACTED],

Appellant.

_____ /

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 [REDACTED]. [REDACTED], social worker, appeared and testified on Appellant's behalf. Appellant; [REDACTED], Appellant's wife; [REDACTED], Appellant's relative; and [REDACTED], Appellant's aunt; also testified as witnesses for Appellant. [REDACTED], Appeals Review Officer, represented the Department of Community Health. [REDACTED], Adult Services Worker (ASW), and [REDACTED], Adult Services Supervisor, from the [REDACTED] County DHS [REDACTED] Office appeared as witnesses for the Department.

ISSUE

Did the Department properly deny Appellant's request for additional 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 [REDACTED] year-old Medicaid beneficiary who has been diagnosed with Amyotrophic lateral sclerosis (ALS) and diabetes. (Respondent's Exhibit A, page 9).
2. Appellant is married and lives with his wife and children. (Respondent's Exhibit A, page 10).
3. In [REDACTED], Appellant applied for HHS. (Respondent's Exhibit A, pages 5-6).
4. As part of the application process, ASW [REDACTED] conducted a home visit and assessment with Appellant and Appellant's wife on [REDACTED]. (Respondent's Exhibit A, page 14).

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5. During that visit, Appellant reported that his wife assists him with some tasks, such as grooming and non-personal care tasks, but she is also disabled and cannot lift heavy amounts or transfer Appellant by herself. (Respondent's Exhibit A, page 14; Testimony of ASW ██████████).
6. ASW ██████████ took Appellant's wife's difficulties in lifting heavy amounts into account in authorizing services, but also advised Appellant and his wife that, per policy, they would need to provide a DHS-54A Medical Needs Form documenting Appellant's wife's disabilities and how those disabilities prevent her from providing care. (Respondent's Exhibit A, page 14; Testimony of ASW ██████████).
7. Following the home visit, on ██████████, Appellant's application for HHS was granted, with an effective start date of ██████████. Specifically, the Department authorized assistance with the tasks of bathing, transferring, toileting, and dressing. In total, Appellant was to receive 32 hours and 36 minutes of HHS per month. (Respondent's Exhibit A, pages 5-6).
8. Appellant was ranked a "5" for and found to need assistance with the tasks of grooming, taking medications, housework, laundry, shopping, and meal preparation. However, no HHS were authorized for those tasks because Appellant's wife could complete the tasks or provide the necessary assistance. (Respondent's Exhibit A, page 12; Testimony of ASW ██████████).
9. On ██████████, Appellant and ASW ██████████ spoke on the telephone regarding Appellant's needs and ASW ██████████ agreed to consider Appellant's request for additional services. During that phone call, Appellant indicated that he needed more time for bathing and toileting, and that he also needs HHS authorized for assistance with grooming. ASW ██████████ and Appellant then went through the tasks of bathing and toileting in order to discuss exactly why he needed more time. However, with respect to grooming, he only stated that he does not like the way she cuts his hair. (Respondent's Exhibit A, pages 15-16; Testimony of ASW ██████████).
10. That same day, ASW ██████████ issued another Services and Payment Approval Notice. In that approval, Appellant was authorized for assistance with the same tasks as before, but in a greater amount. In total, Appellant was to receive 41 hours and 38 minutes of HHS, with a monthly care cost of \$██████████. The effective date of the approval was ██████████. (Respondent's Exhibit A, pages 7-8, 13).
11. On ██████████, the Department received a DHS-54A Medical Needs Form regarding Appellant's wife. However, in that form, the doctor checked "NO" when asked to certify that Appellant's wife had a medical need for assistance with any of the personal care activities identified on the form. (Respondent's Exhibit A, page 18).

12. On ██████████, the Michigan Administrative Hearing System (MAHS) received a Request for Hearing filed by Appellant. In that request, Appellant states that he is totally disabled and requires 23 hours per week of services, not 40 hours a month. (Respondent's Exhibit A, 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 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.

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.]

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, 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 wife in this case and, accordingly, she is a responsible relative.

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Given that Appellant's wife is a responsible relative, the Department can only authorize payments for HHS if she is 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, ASW ██████████ authorized assistance with bathing, transferring, toileting, and dressing. However, while ASW ██████████ also found that Appellant needs assistance with grooming, taking medications, housework, laundry, shopping, and meal preparation, no HHS were authorized for those tasks because Appellant's wife could complete the tasks or provide the necessary assistance.

In response, Appellant first asserts that his wife is unable to provide the requested care because she has disabilities of her own. However, ASM 120 clearly provides that, in order for a responsible relative to be deemed unable to provide services, the relative's "disabilities must be documented/verified by a medical professional on the DHS-54A, Medical Needs form." (ASM 120, page 4 of 5). Here, the medical needs form provided by Appellant and his wife did not verify or document that Appellant's wife has disabilities of her own which prevent her from providing care. Accordingly, the Department properly found that Appellant's wife is able to provide services. To the extent that the Department authorized assistance with some tasks due to Appellant's wife's inability to lift Appellant, without having a medical needs form documenting such an inability, its decision went against policy and does not justify any additional services, especially where the tasks in dispute here do not require heavy lifting.

Appellant also appears to argue that his wife is unavailable to provide the necessary care because she is too tired after caring for their children all of the time. As stated in policy, 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." (ASM 120, page 5 of 5). In this case, despite the testimony during the hearing regarding Appellant's wife's unavailability, it is undisputed that neither Appellant nor his wife claimed during the home visit or subsequent phone call that she was unavailable to provide services. Instead, they only claimed that she was unable. This Administrative Law Judge is limited to reviewing the Department's decision in light of the information available at the time it made that decision. Here, based on the information supplied by Appellant and his wife prior to the approval notices, the Department properly found that Appellant's wife was available to provide services. Moreover, even during the hearing, Appellant's wife failed to provide a work or school schedule to verifying that she is unavailable to provide care, as required by policy.

Appellant bears the burden of proving by a preponderance of the evidence that the Department erred in denying his request for additional services. Here, Appellant has failed to meet that burden of proof. While Appellant clearly needs assistance with the tasks of grooming, taking medications, housework, laundry, shopping, and meal

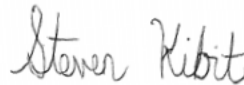
preparation, the Department properly found, for the reasons discussed above, that no HHS should be authorized for assistance with those tasks because Appellant's wife could complete the tasks or provide the necessary assistance.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that, based on the available information, the Department properly denied Appellant's request for additional HHS.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.



Steven Kibit
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

cc:



Date Mailed: 4/22/2013

***** 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.