

**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. 2013-9066 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.*, upon the Appellant's request for a hearing.

After due notice, a hearing was held on [REDACTED]. [REDACTED], the Appellant, appeared on his own behalf. [REDACTED], wife, appeared as a witness for the Appellant. [REDACTED], Appeals Review Officer, represented the Department. [REDACTED], Adult Services Worker ("ASW"), [REDACTED], ASW, and [REDACTED], Adult Services Supervisor, appeared as witnesses for the Department.

ISSUE

Did the Department properly deny the Appellant's Home Help Services ("HHS") application?

FINDINGS OF FACT

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

1. On or about [REDACTED], the Appellant applied for the HHS program. (ASW Steckel Testimony)
2. The Appellant's HHS referral was initially assigned to ASW [REDACTED]. ASW [REDACTED] went off on a leave and the Appellant's HHS referral was eventually reassigned to ASW [REDACTED]. (Exhibit 1, page 10; ASW Steckel and ASW Beyer Testimony)
3. On [REDACTED], ASW [REDACTED] made a visit to the Appellant's home for an initial assessment. The Appellant and his wife confirmed that they are married. It was also reported that the Appellant's wife takes care of the Appellant. (Exhibit 1, page 10 and ASW Beyer 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, and that HHS payments cannot be made to a responsible relative. (Adult Services Manual (ASM) 120, 5-1-2011, Page 4 of 5 and Adult Services Manual (ASM) 140, 11-1-2011, Page 1 of 3)
5. On ██████████, the Department sent an Adequate Negative Action Notice to the Appellant indicating that his HHS application was denied because the Appellant is married and his spouse is currently caring for him. (Exhibit 1, pages 5-9)
6. On ██████████, the Appellant's Request for Hearing was received by the Michigan Administrative Hearing System. (Exhibit 1, page 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 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)

Adult Services Manual (ASM) 140, 11-1-2011 also states:

Do **not** authorize payments to a **responsible relative**.

Adult Services Manual (ASM) 140, 11-1-2011,
Page 1 of 3.

The Appellant applied for HHS on or about ██████████. (ASW ██████████ Testimony) The Appellant's HHS referral was eventually reassigned to ASW ██████████ due to ASW ██████████ being off on a leave. (Exhibit 1, page 10; ASW Beyer Testimony) On ██████████, ASW ██████████ made a visit to the Appellant's home for an initial assessment. The Appellant and his wife confirmed that they are married. It was also reported that the Appellant's wife takes care of the Appellant. (Exhibit 1, page 10 and ASW ██████████ Testimony) Based on the available information, ASW Beyer determined the Appellant's HHS application must be denied.

The Appellant disagrees with denial, but confirmed he has been married for █ years. The Appellant testified that if it was not for his wife, someone else would have to be in the home with him. The Appellant needs assistance with many activities including bathing, feeding, dressing, mobility. If the Appellant was not married to his wife, she could be his caregiver for the HHS program. (Appellant Testimony)

The Appellant disagrees with the Adult Service Manual policy regarding responsible relatives. However, this ALJ does not have any equitable or constitutional authority and must review the action taken under the applicable policy. The ASW properly considered the availability and ability of the Appellant's wife 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 █. Adult Services Glossary (ASG) Glossary 12-1-2007, Page 5 of 6. The Appellant's wife 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 and HHS payments can not be authorized to a spouse. It was uncontested that the Appellant is married and his wife takes care of him.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

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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.