

**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. 2013-15262 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 and testified through her representative and interpreter, ██████████ (daughter). ██████████, Appeals Review Officer, represented the Department. His witness was ██████████, ASW.

ISSUE

Did the Department properly terminate the Appellant's 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. (Appellant's Exhibit #1)
2. The Appellant has medical appointments for knee and hip assessment/replacements in Ann Arbor. (See Testimony)
3. Appellant's witness testified that her spouse spends the bulk of his time caring for his ██████ year-old adult son who is physically disabled and afflicted with cerebral palsy. (See Testimony of ██████████)
4. She added that her ██████ year-old father has no energy to provide for the Appellant's care after tending to the disabled son. (See Testimony and Appellant's Exhibit #1)
5. The Department terminated 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 p. 2)

6. The Appellant was notified of the negative action by DHS 1212A Adequate Negative Action Notice terminating HHS effective ██████████. Her further appeal rights were contained therein. (Department's Exhibit A, pp. 2 and 5)
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

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

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 discovered that the Appellant's spouse takes care of their adult son in their family home. She concluded that since he has the ability to care for his son – he also has the ability to care for his wife.

The Appellant's representative testified that it was simply too much to expect the ██████ year old spouse to take care of both disabled family members particularly when the son requires so much hands on care. She added that when her mother (the Appellant) goes

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in for surgery it will be a difficult situation for her parents. She is fearful for the future safety of both parents.

The Appellant's potential debility relating to recovery from bilateral knee or hip replacement surgery is obvious. However, it has not happened yet. The Appellant should inform her worker of this pending surgical issue which might casue a temporary change in condition – and seek reassessment for future HHS.

However, on review today it was clear that the assisting spouse is able bodied and available to assist in the care of his wife and son. The mere fact that he is [REDACTED]-years of age is not a disqualification under policy. While it might not be convenient – policy makes no such exception unless the provider is unable or unavailable.

The Appellant failed to preponderate her burden of proof. The Department properly denied HHS because the Appellant's spouse is 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 terminated the Appellant's home help benefits.

IT IS THEREFORE ORDERED that:

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

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

cc:

[REDACTED]

Date Mailed: 2/13/2013

***** 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.