

**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. 14-008296 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 ██████████.

Appellant appeared and testified. Appellant's spouse, represented Appellant.

██████████, Appeals Review Office, appeared on behalf of the Department. ██████████, Adult Services Worker ("ASW"), and ██████████, Adult Services Supervisor, appeared as witnesses for the Department.

ISSUE

Did the Department properly terminate 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. Appellant is a ██████ year old Medicaid, SSI beneficiary.
2. Appellant has been a beneficiary of the Home Help Services (HHS) program.
3. On ██████████ Appellant called his ASW and informed him that he married his provided.
4. The ASW had the HHS payments stopped on ██████████. Appellant was married on ██████████. (Testimony)

5. The ASW did not issue a negative action notice until ██████████, informing Appellant that his case "...should have closed ██████████ as you got married; your spouse is legally responsible for taking care of your personal needs. Your home help case is closed immediately...." (Exhibit A.9-10)
6. The ASW testified that he failed to issue the negative action notice for 7 months because of "a large case load." (Testimony)
7. As of the administrative hearing, Appellant's case has not closed. The ASW testimony regarding the failure to close the case for 9 months is because "I have not gotten around to closing." (Testimony)
8. On ██████████ Appellant filed a Hearing with Michigan Administrative Hearing System. (Exhibit A.5)

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
May 1, 2012
Pages 4-5 of 6*

In this case, the issue is whether the DHS properly issued a negative action to close Appellant's case on the ground that policy does not permit services where there is a responsible relative in the home. The ASW properly considered the availability and ability of Appellant's wife to provide care for Appellant based on the information given to him by 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. Appellant's spouse meets the definition of a responsible relative. Appellant's HHS case should be closed based on the information available to the ASW at the time of the assessment.

Appellant argues that his wife does not live with him, and never has. Appellant has the burden of proof. Appellant offered no evidence in support of separate living arrangements, and/or any other reason which would exempt her under federal and state law.

Federal and state law requires that all files of individuals who are recipients of federal programs contain correct and necessary verification(s) to establish eligibility. The burden is on the recipient.

Unrefuted evidence herein is that Appellant is married. Policy requires verification that a spouse in the home triggers ineligibility unless there is evidence that the spouse meets the definition of "unavailable." verification. None is shown here. Appellant's spouse is a "responsible relative" as defined under federal and state law.

Under ASM 120, Appellant has no eligibility for HHS as her spouse is considered to be a responsible relative. As such, this administrative law judge must uphold the Department's denial as it is consistent with federal and state law, and, consistent with Department policy.

[REDACTED]
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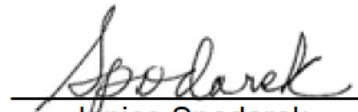
As to the failure of the Department to actually issue negative action notice, and, failure to actually close this case, this ALJ has no remedy. The conduct of a state employee is not reviewable by an ALJ.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly determined that Appellant's case should have closed on the basis of the responsible relative policy for HHS.

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.



Janice Spodarek
Administrative Law Judge
for Nick Lyon, Director

Michigan Department of Community Health

JS [REDACTED]

cc: [REDACTED]

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

***** 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.