

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

P.O. Box 30763, Lansing, MI 48909
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IN THE MATTER OF:

██████████,

Appellant.

Docket No. 14-014119 HHS

██████████

██████████

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 ██████████. Appellant appeared and testified on her own behalf. ██████████ Appeals Review Officer of the Department of Community Health represented the Department of Community Health. ██████████ also testified for the Appellant. ██████████ and ██████████, Adult Services Workers (ASW) from ██████████ County DHS, and ██████████ testified for the Department.

ISSUE

Did the Department act properly when it terminated 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. Appellant is a ██████ year-old (DOB: ██████████) Medicaid beneficiary who was receiving HHS. (Exhibit A, pp. 11, 19 and testimony).
2. On ██████████ ASW ██████████ made a home call at the Appellant's residence at ██████████, and spoke with the Appellant and her provider/husband. The ASW advised the Appellant that a spouse cannot be a paid caregiver for a spouse even if they are legally separated. (Exhibit A, pp. 4, 8, 15 and testimony).
3. On ██████████, the ASW received a call from ██████████ who rents from ██████████ at ██████████ advised that ██████████ lives with Appellant at the ██████████ address. (Exhibit A, p. 15 and testimony).

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4. On [REDACTED], the ASW noted [REDACTED] address on file is [REDACTED] which according to Bridges is the residence of [REDACTED] and [REDACTED]. DHS worker [REDACTED] for [REDACTED] and [REDACTED] confirmed with them that [REDACTED] did not live with them in the [REDACTED] home. (Exhibit A, p. 15 and testimony).
5. On [REDACTED], ASW [REDACTED] made contact with [REDACTED] across the street from the [REDACTED] residence and [REDACTED] stated he lived across the street with [REDACTED]. He changed his story later and said he lived at [REDACTED]. (Exhibit A, p. 16 and testimony).
6. On [REDACTED], the ASW sent Appellant an Advance Negative Action Notice that her HHS was being terminated effective [REDACTED]. The notice stated that the Appellant's husband has been paid to be her provider, but it had been determined that the husband lives in the home and according to the policy in the Adult Services Manual, ASM 120 & 135 a spouse as a responsible relative cannot be paid as a caregiver under the HHS program. (Exhibit A, pp. 7-10, 19-20).
7. On [REDACTED], the Michigan Administrative Hearing System (MAHS) received a Request for Hearing in this matter. (Exhibit A, p. 4).
8. On [REDACTED], the ASW received a call from a [REDACTED] who advised that [REDACTED] does live in the home with the Appellant and has been living in the home but may be using another address. (Exhibit A, p. 16 and testimony).

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.

Here, Appellant's HHS was terminated on the basis that Appellant's husband was the Appellant's paid caregiver. He is a responsible relative and it had not been shown that she was unable and/or unavailable to care for him. Adult Services Manual 120 (12-1-2013) (hereinafter "ASM 120") addressed responsible relatives at the time of the action in this case:

Responsible Relatives

A responsible relative is defined as an individual's spouse or a parent of an unmarried child under age 18.

Activities of daily living (ADL) 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. [ASM 120, p. 6 of 7].

Adult Services Manual 135 (12-1-2013) (hereinafter "ASM 135") addresses provider selection and states in part:

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:

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- 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, p. 1 of 9, emphasis added].

Here, the ASW properly determined that the Appellant's spouse could not be the Appellant's paid caregiver and further that it had not been shown that he was either unavailable or unable to provide for her care prior to [REDACTED] when her HHS was terminated. Rather, it was established that the Appellant's husband was being paid to provide care for the Appellant and that he was actually living in the home with her despite claims that they were separated and living apart.

On [REDACTED] ASW [REDACTED] made a home call at the Appellant's residence at [REDACTED], and spoke with the Appellant and her provider/husband. The ASW advised the Appellant at that time that a spouse cannot be a paid caregiver for their spouse even if they are legally separated.

On [REDACTED], the ASW received a call from [REDACTED] who had rented from [REDACTED] at [REDACTED] advised her that [REDACTED] lives with Appellant at the [REDACTED] address. [REDACTED] said he believes [REDACTED] is now living with the Appellant, because he sees him night and day coming in and out of the house on [REDACTED] and going to the beer store [REDACTED] said he also sees [REDACTED] in the mornings watching TV in the Appellant's front room from across the street when he takes his children to the bus stop.

The ASW noted on [REDACTED] that the address on file at DHS for [REDACTED] is [REDACTED], which according to Bridges is the residence of [REDACTED] and [REDACTED] was advised by [REDACTED] the DHS worker for [REDACTED] and [REDACTED] that she confirmed with them that [REDACTED] did not live with them at the [REDACTED] address.

The ASW was later informed on [REDACTED] that ASW [REDACTED] made contact with [REDACTED] across the street from the [REDACTED] residence and he told her he lived in the house with [REDACTED] told [REDACTED] that [REDACTED] later changed his story and said he lived at [REDACTED] where [REDACTED] lives. [REDACTED] stated she met [REDACTED] when she was called to the Appellant's residence on [REDACTED]. She stated she believes the Appellant's husband lives in the home with the Appellant, because when she arrived at the [REDACTED] address on [REDACTED] told her it was his home. [REDACTED] said she advised him she was there to see the Appellant, and then [REDACTED] let her into the residence and entered along with her.

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Finally, the ASW received a call from a [REDACTED] on [REDACTED], who advised that [REDACTED] does live in the home on [REDACTED] with the Appellant and has been living in the home, but may be using another address. [REDACTED] advised [REDACTED] that she was going to be the Appellant's caregiver after [REDACTED] but she couldn't live in the home because [REDACTED] lived there, and he was a drunk and abuses the Appellant.

Appellant testified during the hearing that everything [REDACTED] said was a lie. She said she has her daughter and son-in-law living with her. Appellant also said [REDACTED] is her intended caregiver. She said her husband does not live with her, and she presented a letter from an insurance company addressed to her husband at [REDACTED], post marked [REDACTED]. Appellant also presented a prescription form from a doctor dated [REDACTED], indicating her husband had shoulder surgery and [REDACTED] ruptured discs in his back and can no longer take care of her. Appellant also acknowledged that her husband's pick-up is parked in her yard, but it only there in case her caregiver needs to take her somewhere.

[REDACTED] testified he stays in the house at [REDACTED]. He said he had been staying there to look after the Appellant ever since [REDACTED] got hurt. He said [REDACTED] had surgery in [REDACTED] t or [REDACTED].

Appellant bears the burden of proving by a preponderance of the evidence that the Department erred in terminating her HHS. Here, given the above evidence and the information available to the Department at the time it made its decision, Appellant has failed to meet her burden of proof and the Department's decision must be affirmed. The Appellant's husband cannot be her paid caregiver. Furthermore, the Appellant was not entitled to receive HHS as her husband, a responsible relative, had been living with her, and there had been no showing that he was either unavailable or unable to provide for her care prior to the termination of her HHS on [REDACTED].

DECISION AND ORDER

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

IT IS THEREFORE ORDERED THAT:

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

William D Bond

William D. Bond
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Community Health

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

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WDB/db

cc:



***** 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.