

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. 2014-15399 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. Anitra Bryant appeared as a witness on behalf of Appellant.

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

ISSUE

Did the Department properly deny 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. Appellant is a ██████ year old female Medicaid beneficiary under the SSI program.
2. Appellant previously had an HHS case open that closed in ██████. Department evidence indicates that the prior case notes indicate that during a home visit, Appellant indicated that she wanted a man in her home to be her provider. The Department discovered sometime later that he was her spouse; the Department was not aware that Appellant and the man were married. (Exhibit A.9)
3. Appellant had a new referral on or about ██████████. The ASW notes in

Appellant's record states in part: "claiming that she is separated from her spouse and her spouse resides in ██████████. He was present for the home visit but says he comes and goes as pleases. Client provided a bank statement showing withdrawals from ██████████ over a 3 month period but the statement came to the Client's address. She also wrote a statement indicating that the marriage was dissolved by irreconcilable differences which was notarized. With her own admission, she is not legally divorced. We requested a driver's license and or utility bills with the Florida address of the spouse but she has not produced them yet." (Testimony). (Exhibit A.11)

4. The Department forwarded the information to Lansing in Exhibit A.11 for an opinion as to required verification. The Policy Division informed the local office that the verification was insufficient to show that spouse is not available and to show a separate residence. (Exhibit A.11)
5. On ██████████ the Department issued an Adequate Negative Action Notice informing Appellant that her HHS application was denied as the documentation is insufficient of separate residences and spouse's unavailability. (Exhibit A.5)
6. On ██████████ Appellant filed a Hearing Request with the Michigan Administrative Hearing System. (Exhibit A.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 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*

Under ASM 120, Appellant has no eligibility for HHS if a spouse is considered to be a responsible relative, and that spouse does not meet the definition of unavailability.

The purview of an administrative law judge (ALJ) is to review the Department's action and to make a determination if those actions are in compliance with Department policy, and not contrary to law. The ALJ must base the hearing decision on the preponderance of the evidence offered at the hearing or otherwise included in the record.

In this case, the ASW's earlier notes on Appellant's prior case indicate that Appellant was in fact married at the time to the man present in her home for the assessment, and failed to disclose this fact to the Department. Moreover, Appellant's submitted a notarized written statement that she was divorced; Appellant subsequently revealed that, in fact, Appellant was still married and is still married. Appellant's credibility was significantly compromised.

The Department documents indicate that Appellant's spouse is using the same address as Appellant. Appellant has the burden of proof to establish eligibility. In addition, the Department is under strict federal mandates to ensure that the evidence in a beneficiary's file is supported by necessary verifications. If not, the State of Michigan may be subject to substantial financial penalties. 42 CFR 435.914

Appellant submitted a visa statement showing withdrawals in [REDACTED]. However, the statement address is in [REDACTED], Michigan, and is Appellant's address. This ALJ does not find that this statement show, by a preponderance of evidence, that Appellant's spouse resides at a different address.

After a careful review of the credible and substantial evidence on the whole records, this ALJ finds that the Department's actions were in compliance with its policy, and supported by the documentary and testimonial evidence taken as a whole. Appellant's arguments were not supported by any evidence or authority that would sufficiently rebut the Department's evidence. As such, the Department's action denial in this case is upheld.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.


Janice Spodarek
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

[REDACTED]
cc:

[REDACTED]

Date Signed: March 25, 2014

Date Mailed: March 27, 2014


Docket No. 2014-15399 HHS
Decision and Order

***** 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.