

**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. 2014-19350 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 with the assistance of an interpreter from provided by the State of Michigan. ██████████ and ██████████ appeared as witnesses on behalf of Appellant.

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

**ISSUE**

Is there authority for the Department to require an SSI disabled spouse to meet the current requirements for the HHS program as a condition of meeting the definition of being "unable" to provide care for the applicant's spouse?

**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 male Medicaid beneficiary, and recipient of the Medicaid program.
2. Appellant's spouse resides in the home with Appellant. (Exhibit A)
3. Appellant has been requesting HHS for almost ██████ years, and has had his request/case transferred between different DHS offices.
4. On ██████████ the ASW did a home visit and determined that Appellant had a

rank of 3 or higher for 3 ADLs. (Exhibit A.14)

5. Appellant's spouse is disabled, and receives SSI. (Testimony)
6. Pursuant to Department instructions, Appellant's spouse's physician completed a DHS-54A on ██████████. Appellant spouse has seizure disorder, memory impairment, headaches, hypertension. Appellant's spouse needs assistance with IADLs. No ADLs were indicated. (Exhibit A.2.2)
7. On ██████████, the Department issued an Adequate Negative Action Notice informing Appellant that his HHS application was denied due to his spouse being considered a responsible relative. (Exhibit A.5)
8. On ██████████ Appellant filed a Hearing Request with the Michigan Administrative Hearing System. (Exhibit A.4)

### **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 disability 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 as his spouse is considered to be a responsible relative unless the spouse is unavailable or unable to provide care due to a disability.

In this case, Appellant's spouse meets the ASM 120 definition of being "unable" if she "...has disabilities of her own that prevents her from providing care. These disabilities must be documented and verified by a medical professional on the DHS-54A, Medical Needs form." ASM 120, p 6.

As noted in the Findings of Fact above, Appellant spouse's physician has been found to be disabled by the federal government under the social security laws and receives Medicaid administered by the State of Michigan. Appellant spouse had a DHS-54A completed pursuant to the Department's instructions by her physician documenting her disability.

The Department has taken the position that it chooses to define spousal disability as a situation only where a spouse is eligible for HHS.

After a careful review of the credible and substantial evidence, this ALJ finds that Appellant's spouse meets the definition of being 'unable to provide care based on a disability' as required by ASM 120. The Department argued that policy requires Appellant spouse to meet the HHS program requirements. However, the Department's argument is not supported by the policy-nowhere in the policy does it state that Appellant spouse must meet the program requirements for HHS in order to be found to be deemed unable to provide care as a spouse due to a disability. Policy does require a DHS-54A, which was completed and delivered to Department. Policy further requires that the spouse be 'disabled.' Appellant spouse received federal social security disability SSI payments. Appellant spouse is disabled:

The definition of disability under Social Security is different than other programs. Social Security pays only for total disability. **No benefits are payable for partial disability or for short-term disability.**

*US Federal Website Disability Planner:  
What We Mean By Disability*

For these reasons, and for the reasons stated above, Appellant's spouse meets the definition of being "unable" to provide home help services for her spouse, and thus, the Department's actions must be reversed.

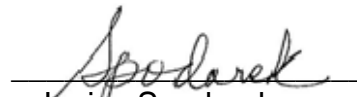
**DECISION AND ORDER**

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

**IT IS THEREFORE ORDERED THAT:**

The Department's decision is REVERSED.

The Department is ordered to open an HHS case on behalf of Appellant from the date of referral as indicated by the in home assessment, and issue supplemental benefits to Appellant to which he may be entitled, as permitted by Department policy and procedure.



Janice Spodarek  
Administrative Law Judge  
for James K. Haveman, 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.