

**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. 2014-20060 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, Appellant's spouse, appeared as a witness 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

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 male Medicaid beneficiary.
2. Appellant has been diagnosed with stroke, dementia, stomach cancer, diabetes, HBP.
3. On ██████████ the ASW did a home initial assessment. Appellant's caretaker and spouse was present. Appellant and his spouse have been legally separated for █ years. On ██████████, Appellant's spouse obtained guardianship over him at which time he moved into Appellant's home.
4. The ASW progress notes indicate that "...although client may be eligible

for services, the client lives with wife and is still legally married. Per policy, she is considered a responsible spouse and therefore client is not eligible for HHS.” (Exhibit A.12)

5. On ██████████, the Department issued an Adequate Negative Action Notice informing Appellant that his HHS application was denied as policy requires denial due to spouse being considered a responsible relative. (Exhibit A.8)
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 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.

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, unrefuted evidence on the record indicates that Appellant and his spouse are still legally married. However, they have been legally separated for [REDACTED] years. A review of the policy does not show that a legally separated couple is an exception to the responsible relative policy. Unfortunately for Appellant, while seemingly otherwise eligible, he is not eligible as they reside in the same residence and his spouse does not meet the definition of 'unavailability'.

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 was a credible witness; but the facts require denial.

Appellant's spouse understands that should she be able to show that she meets the "unavailability" policy, Appellant may be eligible for HHS. As the case stands, denial is required.

[REDACTED]
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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 26, 2014


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***** 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.