



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

MARLON I. BROWN, DPA
ACTING DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: February 2, 2024
MOAHR Docket No.: 23-009635
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Robert J. Meade

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 Petitioner's request for a hearing.

After due notice, a hearing was held on January 31, 2024. [REDACTED] Petitioner, appeared and testified on her own behalf. Allison Pool, Appeals Review Officer, appeared on behalf of Respondent, Michigan Department of Health and Human Services (MDHHS or Department). Nadia Lemmons, Adult Services Worker (ASW) and Vivian Hurst, Adult Services Supervisor, appeared as witnesses for the Department. Lana Karadsheh, Appeals Review Officer appeared as an observer.

ISSUE

Did the Department properly deny Petitioner's application for the Home Help Services (HHS) program?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Petitioner is a Medicaid beneficiary, who applied for HHS on or about [REDACTED] (Exhibit A, p 11; Testimony)
2. Petitioner is diagnosed with chronic back pain and left hip trochanteric bursitis. (Exhibit A, p 13; Testimony)
3. On November 21, 2023, the ASW conducted an initial assessment in Petitioner's home. Petitioner and her spouse were present for the assessment. The ASW learned during the assessment that Petitioner is married and lives with her spouse, that her spouse wanted to be her provider for HHS, and that her spouse was on disability due to mental health issues. The ASW noted that the spouse claimed to already assist

Petitioner with her Activities of Daily Living (ADL's) and Instrumental Activities of Daily Living (IADL's). (Exhibit A, p 12; Testimony)

4. Department policy states that HHS may not be authorized for services that a responsible relative, such as a spouse, is able and available to provide. (Adult Services Manual (ASM) 101, 4-1-18, pp 4-5)
5. A 54A Medical Needs form signed by Petitioner's doctor on November 1, 2023 indicates that Petitioner needs help with grooming, dressing, shopping, laundry, and housework. (Exhibit A, p 13; Testimony)
6. On December 11, 2023, the Department sent an Advance Negative Action Notice to Petitioner indicating that her HHS application would be denied because there was a responsible relative residing in the home with Petitioner and the ASW received no information that the spouse was unable or unavailable to care for Petitioner. (Exhibit A, p 8; Testimony)
7. On December 27, 2023, Petitioner's Request for Hearing was received by the Michigan Office of Administrative Hearings and Rules. (Exhibit A, p 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 addresses responsible relatives:

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 and 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 *Contacts* in MiAIMS.

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 ASW would not approve hours for shopping, laundry or house cleaning as Mr. Smith is responsible for these tasks and is able to complete these tasks on the weekends.

*ASM 120
May 1, 2023
Page 7-8 of 9*

ASM 101 lists services not covered by HHS:

Services not Covered by Home Help

Home help services must not be approved for the following:

- Services for which a responsible relative is able and available to provide (such as house cleaning, laundry, or shopping). A responsible relative is defined as an individual's spouse or parent of an unmarried child under the age of 18.

*ASM 101
April 1, 2018
Page 4-5 of 5*

The ASW testified that on November 21, 2023, she conducted an initial assessment in Petitioner's home. The ASW noted that Petitioner and her spouse were present for the assessment. The ASW testified that she learned during the assessment that Petitioner is married and lives with her spouse, that her spouse wanted to be her provider for HHS, and that her spouse was on disability due to mental health issues.

The ASW noted that the spouse claimed to already assist Petitioner with her ADL's and IADL's.

Petitioner testified that she developed back pain some years ago after being in a car accident. Petitioner indicated that the pain got progressively worse and that she has already had one back surgery and is set for another. Petitioner testified that she also has had two knee replacements and multiple stomach surgeries. Petitioner indicated that her husband does take care of her, but he cannot do everything because he also has a bad back. Petitioner claimed that she mentioned this to the ASW at the assessment.

As indicated above, ASM 120 defines a responsible relative as a person's spouse or a parent of an unmarried child under age 18. ASM 101 indicates that HHS is not covered if there is a responsible relative living in the home, who is able and available to provide care. Petitioner's spouse meets the definition of a responsible relative, and no evidence was presented to the Department showing that Petitioner's spouse was unable or unavailable to provide care to Petitioner as of the date of action in this matter, December 11, 2023. In fact, the ASW learned that Petitioner's spouse is already taking care of Petitioner and wanted to be Petitioner's paid HHS provider. And while Petitioner argues that her husband is not able to take care of all her needs because of his own bad back, that information was not noted by the ASW during the assessment and that information has not been verified on the 54A Medical Needs form, as required by policy.

If Petitioner's spouse's is in fact unable to care for Petitioner due to his own disability, that fact must be documented, and Petitioner can then reapply for HHS. Petitioner's spouse, however, cannot be her HHS provider. Given the above, Petitioner's HHS was properly denied based on the information available to the ASW at the time of the denial.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly denied Petitioner's HHS application based on the information available at the time of the denial notice.

IT IS THEREFORE ORDERED THAT:

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

RM/sj



Robert J. Meade

Administrative Law Judge

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30763
Lansing, Michigan 48909-8139

PROOF OF SERVICE

I certify that I served a copy of the foregoing document upon all parties, to their last known addresses in the manner specified below, this 2nd day of February 2024.

S. James

S. James

**Michigan Office of Administrative
Hearings and Rules**

Via Electronic Mail:

Agency Representative

Allison Pool
MDHHS Appeals Section
Lansing, MI 48909
PoolA@michigan.gov

DHHS Department Contact

Michelle Martin
MDHHS
Lansing, MI 48933
**MDHHS-Home-Help-
Policy@michigan.gov**

DHHS Location Contact

Sherry Reid
MDHHS-Greenview
Adult Services District
Detroit, MI 48219
**MDHHS-WC-
MAHSHearing@michigan.gov**

DHHS Department Representative

Mary Carrier
MDHHS Appeals Section
Lansing, MI 48909
MDHHS-Appeals@michigan.gov

Via First Class Mail:

Petitioner

[REDACTED]
[REDACTED] MI [REDACTED]