



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: April 7, 2022
MOAHR Docket No.: 22-000860
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 April 5, 2022. Petitioner appeared and testified on his own behalf. Leigha Burghdoff, Appeals Review Officer, appeared on behalf of Respondent, Michigan Department of Health and Human Services (Respondent, MDHHS or Department). Daeauna Sangster, Adult Services Worker (ASW) and Margo Peterson, Adult Services Supervisor, appeared as witnesses for the Department.

ISSUE

Did the Department properly suspend Petitioner's Home Help Services (HHS) due to Petitioner having a 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. Petitioner is a [REDACTED] year-old Medicaid beneficiary, born [REDACTED] who has been receiving HHS since on or about November 15, 2006. (Exhibit A, p 7; Testimony)
2. Petitioner is diagnosed with peripheral neuropathy, deep vein thrombosis, lumbago-low back pain, tremors, and degenerative disc disease. (Exhibit A, p 10; Testimony)
3. Petitioner is married and currently lives with his spouse. (Exhibit A, p 9; 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. The ASW requested paperwork from Petitioner on August 13, 2021, September 9, 2021, January 31, 2022, and March 21, 2022, demonstrating that Petitioner's wife is either unable to provide his care (a 54A Medical Needs form) or unavailable to provide that care (a work schedule on company letterhead). As of the date of the hearing, Petitioner had not provided such paperwork. (Exhibit A, pp 12-14; Testimony)
6. On February 11, 2022, the Department sent a Negative Action Notice to Petitioner indicating that his HHS would be suspended 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 11; Testimony)
7. On February 28, 2022, Petitioner's Request for Hearing was received by the Michigan Office of Administrative Hearings and Rules. (Exhibit A, pp 5-6)

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) 101, 4-1-2018, addresses services available through HHS:

Services not Covered by Home Help

Home help services must not be approved for the following:

- Supervising, monitoring, reminding, guiding, teaching or encouraging (functional assessment rank 2).
- Services provided for the benefit of others.
- 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 a parent of an unmarried child under age 18.

- Services provided by another resource at the same time (for example, hospitalization, MI-Choice Waiver).
- Transportation - See Bridges Administrative Manual (BAM) 825 for medical transportation policy and procedures.
- Money management such as power of attorney or representative payee. • Home delivered meals.
- Adult or child day care.
- Recreational activities. (For example, accompanying and/or transporting to the movies, sporting events etc.)

Note: The above list is not all inclusive.

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

Adult Services Manual (ASM) 120, 4-1-2021, 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.

Adult Services Manual (ASM) 120
April 1, 2021
Page 7-8 of 9
Emphasis added

The ASW testified that Petitioner is married and lives with his spouse. The ASW indicated that she requested paperwork from Petitioner on August 13, 2021, September 9, 2021, January 31, 2022 and March 21, 2022 demonstrating that Petitioner's wife is either unable to provide his care (a 54A Medical Needs form) or unavailable to provide that care (a work schedule on company letterhead), but as of the date of the hearing, Petitioner had not provided such paperwork. The ASW indicated that based on this, on February 11, 2022, she sent a Negative Action Notice to Petitioner indicating that his HHS would be suspended 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.

Petitioner testified that he has explained to the ASW that his wife is unable to do the work that he is asking her to do. Petitioner noted that his wife leaves the house for work six days per week from 7:00 a.m. to 6:00 p.m. and she is also too small to lift him, or do the work required. Petitioner indicated that he is in a wheelchair and really needs this help. Petitioner also indicated that the only reason he is living with his spouse is because she took him in when his apartment burned down, and she did not want him living on the street in a wheelchair. Petitioner also noted that as of next week he will be moving in with his provider. Petitioner testified that this is no laughing matter as he really needs the help. Petitioner indicated that he has been receiving HHS for 16 years and this has never been a problem until now.

In response, the ASW indicated that Petitioner simply moving out of the house might not solve the problem because he would still need to prove to the Department that his wife is unable and/or unavailable to assist him.

As indicated above, ASM 120 defines a responsible relative as a person's spouse or a parent of an unmarried child under age 18. 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 the negative action in this matter, February 11, 2022. In fact, the ASW has repeatedly requested documentation from Petitioner showing that his wife is unable or

unavailable to care for him since at least August 2021 and Petitioner has still not provided such proof. As such, Petitioner's HHS was properly suspended based on policy and 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 suspended Petitioner's HHS based on the information available at the time of the denial notice.

IT IS THEREFORE ORDERED THAT:

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



RM/tem

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.

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