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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

MARLON I. BROWN, DPA
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: November 8, 2024
MOAHR Docket No.: 24-010609
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Steven Kibit

DECISION AND ORDER

This matter is before the Michigan Office of Administrative Hearings and Rules (MOAHR) and the undersigned Administrative Law Judge (ALJ) pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.*, and upon Petitioner's request for a hearing.

After due notice, a telephone hearing was held on October 29, 2024. Petitioner's spouse, [REDACTED] appeared and testified on Petitioner's behalf. Petitioner also testified as a witness on his own behalf. Allison Pool, Appeals Review Officer, represented the Respondent Department of Health and Human Services (DHHS or Department). Jennifer Diop, Home Help Supervisor, testified as a witness for the Department.

During the hearing, the Department submitted an evidence packet that was admitted into the record without objection as Exhibit A, pages 1-25. No other proposed exhibits were submitted.

ISSUE

Did the Department properly decide to terminate Petitioner's Home Help Services (HHS)?

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 who has been approved for HHS through the Department since March of 2021. (Exhibit A, page 12).

2. On September 4, 2024, an Adult Services Worker (ASW) with the Department conducted a routine review with Petitioner in Petitioner's home. (Exhibit A, page 13).
3. During that review, Petitioner reported that he was married to his approved home help provider. (Exhibit A, page 13; Testimony of Petitioner).
4. On September 13, 2024, the ASW spoke with Petitioner's home help provider, who confirmed that she and Petitioner were married in September of 2023. (Exhibit A, page 13; Testimony of Petitioner's representative).
5. On September 16, 2024, the Department sent Petitioner written notice that his HHS would be terminated as of September 30, 2024, because Petitioner is married, and per policy, the Department will not pay for services rendered by an able and available spouse. (Exhibit A, page 10).
6. On September 23, 2024, the Michigan Office of Administrative Hearings and Rules (MOAHR) received the request for hearing filed by Petitioner in this matter regarding the termination of his HHS. (Exhibit A, pages 7-11).

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 statutes, 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.

Regarding services available through the home help program, Adult Services Manual (ASM) 101 (4-1-2018) states in part:

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 a parent of an unmarried child under age 18.

ASM 101, pages 4-5

Similarly, ASM 120 (5-1-2023) states in part:

Responsible Relatives

A responsible relative is defined as an individual's spouse or a parent of an unmarried child under the age of 18.

Activities of daily living (ADLs) 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 *Contacts* module in MiAIMS.

Example: Mrs. Smith needs Home Help services. Her spouse is employed and is out of the home Monday through 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, pages 7-8

Additionally, ASM 135 (7-1-2024) states in part:

The client has the right to choose their Home Help caregiver(s). The client is the employer and may terminate the caregiver's employment at any time. Home Help services are a benefit to the client and earnings for the caregiver.

Do **not** pay Home Help services to:

- A responsible relative (a spouse caring for a spouse or a parent caring for a minor child).

Note: Individuals who are married, but separated from their spouse, must provide verification that they are no longer residing in the same home (responsible relatives must be unable or unavailable for the client to be eligible to receive Home Help services). Verification may include their driver's license, rent receipt, or utility bill reflecting their separate mailing address. A spouse who is separated from a spouse cannot be the individual paid to provide Home Help services.

ASM 135, page 1

As discussed above, the Department terminated Petitioner's HHS in this case pursuant to the above policies regarding responsible relatives.

In appealing that decision, Petitioner bears the burden of proving by a preponderance of the evidence that the Department erred.

Given the record and applicable policies, Petitioner has failed to meet his burden of proof; and the Department's decision must, therefore, be affirmed.

As expressly provided above, HHS cannot be approved for services that a responsible relative, such as a spouse, is able and available to provide. Nor can payments for HHS be made to a responsible relative, as in cases where a spouse is caring for his or her spouse.

Here, it is undisputed that Petitioner's home help provider has been and continues to be his spouse. It is also undisputed that as demonstrated by the fact that she has been providing any necessary assistance, Petitioner's provider/spouse is able and available to provide the services that have been included as part of Petitioner's HHS. And based on that undisputed record, Petitioner no longer qualified for HHS; and the Department's decision to terminate his services was proper.

Rather than disputing the applicable policies or the Department's findings, Petitioner and his representative instead testified that they were unaware of the policies and that they did not fail to report their marriage out of malice. However, even if true, the Department's decision was still proper and must be affirmed.

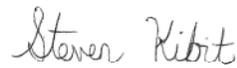
DECISION AND ORDER

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, decides that the Department properly decided to terminate Petitioner's HHS.

IT IS, THEREFORE, ORDERED that:

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

SK/pe



Steven Kibit
Administrative Law Judge

NOTICE OF APPEAL: Petitioner 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

Via Electronic Mail:

Agency Representative

Allison Pool
MDHHS Appeals Section
P.O. Box 30807
Lansing, MI 48909
PoolA@michigan.gov

DHHS

Dawn Tromontine
Macomb County DHHS Sterling Heights Dist.
41227 Mound Rd.
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DHHS Department Contact

Michelle Martin
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Via First Class Mail:

Petitioner and Authorized Hearing Representative

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