

**STATE OF MICHIGAN  
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES  
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

P.O. Box 30763, Lansing, MI 48909  
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IN THE MATTER OF:

██████████

Appellant

\_\_\_\_\_ /

Docket No. 2009-36324 HHR

██████████

**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 ██████████. The Appellant appeared without representation. The Department was represented by ██████████, appeals review officer. ██████████, Adult Services Supervisor, and ██████████, Migrant Program Worker, appeared as witnesses on behalf of the Department.

**ISSUE**

Did the Department properly pursue recoupment against the Appellant Home Help Provider?

**FINDINGS OF FACT**

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

- 1) On ██████████, the Appellant was authorized to be the home help provider for her mother, a Medicaid beneficiary. (Exhibit 1, page 14)
- 2) The Appellant's mother and father are married and live in a home together. The Appellant's mother does not speak English and her father speaks limited English.
- 3) On ██████████, a DHS Adult Services Worker (ASW) made a visit to the Appellant's mother's home to conduct a Home Help Services assessment. The Appellant's mother and father were present in the home. The

Appellant's father informed the ASW that the Appellant had not been providing any home help services for her mother since April 2009. (Testimony)

- 4) On ██████████, the ASW had a Spanish speaking DHS worker call the Appellant's father and confirm the statements he made during the home visit. (Testimony and Department Exhibit 1, pages 10-11)
- 5) On ██████████, the department issued notices to the Appellant of overpayments for personal care services for the time period from ██████████ through ██████████. (Department Exhibit 1, pages 5-7)
- 6) On ██████████, the department issued a certified letter to the appellant requesting she repay ██████████ from the overpayments. (Department Exhibit a, page 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 health professional and may be provided by individuals or by private or public agencies.

Services Requirements Manual (SRM 181, 6-1-07), addresses the issue of recoupment:

### **GENERAL POLICY**

The department is responsible for correctly determining eligibility of payment of service program needs, and the amounts of those payments. In the event of payments in an amount greater than allowed under department policy, an overpayment occurs.

When an overpayment is discovered, corrective action must be taken to prevent further overpayment and the overpayment is to be recouped. The normal suspense period must be allowed for any client negative actions. An entry is to be made in the case record to document the overpayment, the cause of the overpayment and the action taken to prevent further overpayment and to recover the overpayment.

### **INSTANCES OF OVERPAYMENT**

Four instances may generate overpayments:

- Client errors.
- Provider errors.
- Administrative errors.
- Department upheld at an administrative hearing.

### **APPROPRIATE RECOUPMENT ACTION**

Appropriate action in these instances is to be based on the following:

1. Information given to the department by a client is incorrect or incomplete.

a. Willful client overpayment occurs when:

- A client reports inaccurate or incomplete information or fails to report information necessary to make a correct eligibility or grant determination; and
- The client had been clearly instructed regarding the client's reporting responsibilities, (a signed DHS-390 or DHS-3062 is evidence of being clearly instructed); and
- The client was physically and mentally capable of performing the client's reporting responsibilities; and
- The client cannot provide a justifiable excuse for withholding information.

b. Non-willful client errors: Are overpayments received by clients who are unable to understand and perform their reporting responsibilities due to physical or mental impairment or who have a justifiable excuse for not giving correct information.

2. Provider caused overpayment: Service providers are responsible for correctly billing for services which were authorized and actually delivered and for refunding overpayments resulting from a negative billing process (payment is issued as a result of a specialist generated payment document). Failure to bill correctly or refund overpayments is a provider error.

SRM 181 6-1-2007, Pages 1-2 of 4.

In the present case, the Appellant was authorized as the Home Help Services provider for her mother as of ██████████. (Exhibit 1, page 14) The Department testified that the Adult Services Worker (ASW) performed a home visit on ██████████ to the Appellant's parent's home. The Appellant's father stated to the ASW that the Appellant had not been providing any Home Help Services in the home for her mother since ██████████ (Testimony) On ██████████ the ASW had a Migrant Program Worker (MPW) the statements he made during the home visit were correctly understood because his English is limited. The MPW testified that she confirmed with the

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Appellant's father that the Appellant had not been in the home to take care of her mother and that he was providing the care himself. (Testimony and Exhibit 1, page 11) Based on the information provided by the Appellant's father, the Department issued notices to the Appellant of over-payments for personal care services for the time period from ██████████ and requesting repayment of ██████████ Exhibit 1 pages 4-7)

The Appellant testified that her father was not telling the truth to the Department workers. The Appellant testified she had been providing home help services for her mother until ██████████ the date her father kicked her out of their home. Accordingly, there was at least a period in ██████████ which the Appellant did not provide Home Help Services for her mother.

The Appellant also testified that when she was caring for her mother, she did not always provide the assistance services at her parent's home. The Appellant stated that her mother lived with her in ██████████, due to the electricity being shut off to her parent's home. The Appellant also explained that providing the services for her mother in their home was difficult because of the lack of electricity and her father's behavior. For example, the Appellant stated that she would prepare meals for her mother at her own home and bring them to her parent's home. However, the Appellant stated that her father would not give these meals to her mother and would instead provide the Appellant's mother with food himself.

Further, the Appellant testified that her father is able to care for her mother. Under the Home Help Services policy, the Department is to consider the availability or ability of any responsible relative or legal dependent of the client to perform the tasks the client does not perform. Home Health Service can only be authorized for those services or times which the responsible relative/legal dependent is unavailable or unable to provide. Adult Service Manual (ASM) 363 9-1-2008 page 5 of 24. A spouse is considered a responsible relative under the Adult Services Glossary (ASG 12-1-2007 page 5 of 6) accordingly, the Appellant should not have been authorized as a provider since her father, a responsible relative, is able to provide the services.

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly sought recoupment from the Appellant/Provider. However, documentation provided does not support the requested overpayment amount of ██████████. The department submitted documentation of three warrants with overpayment amounts issued ██████████, ██████████, ██████████ ██████████ (Exhibit 1, pages 5-7) Accordingly, the overpayment amount is ██████████

**DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly pursued recoupment against the Appellant Home Help Provider.

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**IT IS THEREFORE ORDERED** that:

The Department's decision in seeking recoupment is **PARTIALLY AFFIRMED**. The overpayment amount is [REDACTED]

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Colleen Lack  
Administrative Law Judge  
for Janet Olszewski, Director  
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 1/8/2010

**\*\*\* NOTICE \*\*\***

The State Office of Administrative Hearings and Rules 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 State Office of Administrative Hearings and Rules 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.