STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
FOR THE DEPARTMENT OF COMMUNITY HEALTH
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IN THE MATTER OF:

[redacted]

Appellant
_____/

Docket No. 2009-37186 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 [redacted]. The Appellant appeared without representation. The Department was represented by [redacted], appeals review officer. Her witnesses were [redacted] and [redacted] supervisor. Also in attendance was [redacted].

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) The Appellant is the guardian/representative/home help provider for her adult, disabled son/Medicaid client. (Department's Exhibit A, pp. 6, 7, 11, 12)

2) The Client has had a sporadic Medicaid history since [redacted]. (Department's Exhibit A, p. 7)

3) On [redacted], the Appellant home help provider received a certified letter seeking payment of [redacted] over-payment. (Department's Exhibit A, p. 2)

4) On [redacted], the guardian/representative/provider made application for Medicaid on behalf of the Client (her disabled adult son) under the direction of [redacted]. (Department's Exhibit A, p. 9 and *See* Testimony)

5) [redacted] requested certain income/asset records of the Appellant's household which were supplied on [redacted]. (Department's Exhibit A. p. 9)

6) The only records submitted by the guardian/representative/provider were social security and retirement data. Bank records were not produced according the Department. (Department's Exhibit A, p. 8)

7) The Client's ASW, [redacted], then scheduled HHS payments out 13 months owing to her assessment of program [HHS] eligibility – she then retired from state employment. *(See* Testimony)

8) The Provider continued to provide services. (Appellant's Exhibit #1, p. 2)

9) The Appellant Provider said she did not know of the ineligibility ruling and produced a MI HEALTH card at hearing as observed by witness [redacted].

10) The instant request for hearing was received by SOAHR on [redacted]. (Appellant's Exhibit #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 health professional and may be provided by individuals or by private or public agencies.

While it has always been the policy of the Department to acknowledge innocent administrative error jurisdiction does not reach eligibility decisions which should have been brought before Department of Human Services (DHS). Today it was fairly established that the chore provider received payment while the client was ineligible for Medicaid – for whatever reason. The proper forum for any dispute regarding eligibility would have been before the Department of Human Services.

Today there were no proofs brought by the provider to establish that payment did not take place. Recoupment was properly brought by the Michigan Department of Community Health

GENERAL POLICY [DHS]

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.
>
> ....
>
> 3. Administrative overpayments:
>
> a. A computer or mechanical process may fail to generate the proper amount of payment to the client or the provider and an overpayment may occur. The department will recoup the overpayment from the provider or client, depending on who was overpaid.
>
> b. Specialist error may cause authorization of more service than the client is entitled to receive. The authorization will cause the provider to provide, in good faith,[1] these services. In these instances there will be no recoupment.
>
> ....
>
> (Emphasis supplied) SRM 181 pp. 1 – 4, June 1, 2007

* * *

The testimony established two significant facts; the Client had no Medicaid eligibility for the above reported time period and DHS made payment to the provider.

While there might have been good reason for automatically authorizing *HHS* payment for 13-months[2] second guessing DHS policy on this point is beyond the scope of the ALJ's jurisdiction today.

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 in the amount of [redacted]

[1] If the Appellant had a dispute regarding eligibility she should argued good faith provision of services before DHS.
[2] The Department's records indicate "… [this] case is a stable one." *See* Ex A, p. 12a and *See also* Ex. #1, p. 10

IT IS THEREFORE ORDERED that:

The Department's decision in seeking recoupment is AFFIRMED.

Dale Malewska
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc: [redacted]

Date Mailed: 12/8/2009

***** 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.