

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

P.O. Box 30763, Lansing, MI 48909
(877) 833-0870; Fax: (517) 334-9505

IN THE MATTER OF:

██████████

Appellant

_____ /

Docket No. 2010-40510 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 Worker, and ██████████, Adult Services Supervisor, appeared as witnesses on behalf of the Department.

ISSUE

Did the Department properly pursue recoupment against the Appellant for Home Help Services for the month of ██████████

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 a Medicaid beneficiary who received Home Help Services (HHS).
- 2) ██████████ was enrolled as the Appellant's HHS provider in ██████████ and still her enrolled provider the period of ██████████ through ██████████. (Exhibit 4, pages 2-4)
- 3) The Appellant's case was due for an annual review in ██████████ (Exhibit 1, page 15)

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- 4) On [REDACTED], the Adult Services Worker (ASW) received a call from the Appellant that she could not meet with her on [REDACTED], for the home visit because her provider was out of town. (Exhibit 1, page 15)
- 5) On [REDACTED], the ASW received a call from the Appellant that she could not meet with her on [REDACTED] for the annual review. The Appellant was instructed to call when her provider is back in town. (Exhibit 1, page 15)
- 6) On [REDACTED], the ASW called the Appellant regarding the need to complete the home visit for the annual review and the Appellant stated her provider has been out of town for over a month and did not know when she would arrive back home. The Appellant also told the worker that someone else was taking her providers place while she was out of town. (Exhibit 1, page 15)
- 7) On [REDACTED], the ASW issued a letter notifying the Appellant that an overpayment occurred for the time period of [REDACTED] to [REDACTED] totaling [REDACTED] because personal care services were not provided and the client/provider moved out of state. (Exhibit 1, page 7)
- 8) On [REDACTED] the Department of Community Health issued a certified letter to the Appellant requesting she repay [REDACTED] to the Home Help Program. This letter indicated that the Appellant had until [REDACTED] [REDACTED] contest the debt. (Department Exhibit 1, page 4)
- 9) The certified letter was returned to sender as unclaimed unable to forward. (Exhibit 1, page 5)
- 10) On [REDACTED], the State Office of Administrative Hearings and Rules received the Appellant's written hearing request. (Exhibit 1, page 3)

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

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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, [REDACTED] was the Appellant's authorized Home Help Services provider. (Exhibit 4, page 2) [REDACTED] left the state for a period of time in [REDACTED], though the parties disagree as to how long she was gone. The Department's case notes indicate they spoke with the Appellant three times between [REDACTED] in an attempt to re-schedule a home visit for the annual case review. Over the course of these calls, the Appellant repeatedly indicated her provider was out of town. (Exhibit 1, page 15) Based on the Appellant's statements during the [REDACTED] telephone call indicating her provider had been out of town for over a month, the Department began recoupment proceedings for the Home Help Service payment for the month of [REDACTED] (Exhibit 1, pages 7 and 15-16)

The Appellant testified that she never stated her provider was gone for over a month. She explained that the trouble scheduling the home visit was not just due to her provider being out of town. The Appellant stated some trouble scheduling the home visit was due to finding a date that worked around her own medical appointments and the ASW's schedule. She testified that [REDACTED] was only out of town for 4 days because her aunt in [REDACTED] was ill. The Appellant explained that someone else filled in for the provider during those 4 days, and that she tried to ask the ASW if this was allowed, but never got a response to her messages. The Appellant provided written statements to support her testimony as her planned witnesses were unavailable to testify at the hearing. (Exhibit 2-3)

However, the Appellant later testified that there were at least 2 trips because her provider went back to [REDACTED] after her aunt died to deal with the estate. During the later trip, the Appellant testified that a doctor in [REDACTED] put [REDACTED] on bed rest due to her pregnancy, but that even then she was only gone for the weekend. The Appellant also testified that after she received the recoupment paperwork, she called the Department again and spoke with someone else who tried to direct her to her ASW. During this call, the Appellant explained that she had been trying to get a hold of the ASW because she wanted to know if someone else could fill in for her provider who was stuck in [REDACTED] on bed rest. The Appellant stated that this Department worker told her this was not allowed. (Appellant testimony)

The Appellant also provided testimony as to why her son would have gone to the local Department office to report her for fraud, stating that [REDACTED] had been living in [REDACTED] for over six months. However, the recoupment process began well before the

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Appellant's son contacted the Department in [REDACTED]. (Exhibit 1, pages 8-9) Therefore, this information did not prompt the Department to pursue recoupment for the HHS payment for the month of [REDACTED]. Further, the ASW met with [REDACTED] to complete the annual review so HHS payment could resume. (Exhibit 1, page 11)

The Department has presented sufficient evidence to support the recoupment action for the month of [REDACTED]. The documentation of the telephone conversations with the Appellant between [REDACTED] 9 indicate the Appellant repeatedly reporting her provider was out of town for an extended period of time. (Exhibit 1, page 15) The Appellant's testimony can not be found fully credible. Her testimony was inconsistent regarding when and how long [REDACTED] was gone. Despite acknowledging that [REDACTED] was gone for at least two trips, she only indicated someone else filled in for 4 days. Yet the provider logs submitted to the Department signed by the Appellant and [REDACTED], certifying that [REDACTED] provided the indicated services for the Appellant, fail to indicate any breaks in services from her enrolled provider between [REDACTED]. Nor is there any notation to indicate that someone else filled in while [REDACTED] was unavailable. (Exhibit 4 pages 3-4) 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 of [REDACTED]

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.

IT IS THEREFORE ORDERED that:

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

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

cc:

[REDACTED]

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Date Mailed: 9/22/2010

***** 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.