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

Appellant
__________________________/

Docket No. 2010-53523 HHR

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge (ALJ) 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 . The Appellant appeared without representation. The Department was represented by . , appeared as a witness 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 a Medicaid beneficiary.

2) The former provider for the Medicaid beneficiary and program participant had informed the DHS Adult Services Worker she could no longer serve as a provider for the beneficiary.

3) The Appellant Home Help Services agency was authorized to provide 3 hours per week of assistance with housekeeping, medication and shopping on behalf of their client.

4) The Appellant agency was paid per month from , for services to be provided to the Medicaid beneficiary.

5) On [redacted], the DHS Adult Services Worker made a home call to the Medicaid beneficiary who informed her that the Appellant agency had not and was not providing homemaking, shopping or medication services to her.

6) The Medicaid beneficiary specifically informed the DHS worker that her granddaughter, who had been her former provider was not providing any services to her and expressed concern that she not be paid for services.

7) On [redacted], the Appellant was notified by the DHS Adult Services Worker that she had been overpaid in the amount of [redacted] for services to the Medicaid beneficiary that had not been provided.

8) On [redacted], a certified letter was sent to the Appellant from the Michigan Department of Community Health requesting payment in the amount of [redacted], the amount of the overpayment referenced in Finding of Fact #7.

9) The Appellant requested a hearing to contest the determination that an overpayment had occurred.

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 the beneficiary as of [redacted]. She was specifically authorized to provide medication assistance, housekeeping and shopping services for 3 hours per week. She was paid [redacted] per month by the DHS to provide the services. Thereafter in [redacted], at a home visit, the Department's worker learned directly from the beneficiary that the services had not been provided. The Department seeks reimbursement of the amount of overpayment for services that have not been rendered.

At hearing, the Appellant's testimony was that she had set up for the granddaughter to provide medication and transportation services to the beneficiary. She asserted the granddaughter was an employee of the agency and it was easier to have her provide the transportation and medication set up needed. She asserted she herself went to the beneficiary's home 2-3 times per week to perform the other services. The Appellant asserts that she did provide all authorized services to the beneficiary. She said services in excess of the 3 hours authorized per week were actually provided. The Appellant asserts the Medicaid beneficiary gets confused and that is why she asserts she was not being provided services.

The documentation submitted into the evidentiary record includes a typed letter signed by the Medicaid beneficiary indicating she had not received services from the Appellant agency and that she did not believe the agency should receive any compensation because the services were never provided. The Appellant submitted a letter indicating that the beneficiary's granddaughter "supervised" all care rendered to the beneficiary. She also presented an employment application and agreement ostensibly signed by the beneficiary's granddaughter.

This ALJ did consider the testimony from the Appellant that her client was mentally confused, thus not reliable. While it is certainly possible the client is mentally confused, the assertion that this is the basis for the inaccurate statements from her concerning lack of services is viewed as self serving, especially given the context and other uncontested facts. Other material facts considered include the evidence that the granddaughter who was allegedly providing at least some service had been a previous provider and had to be replaced because she was no longer able to fulfill her grandmother's needs. That is the reason the Appellant's agency was brought in the first place. To believe that thereafter the person who was not available was then hired by the replacement agency and provided services she had just told the DHS she could no longer perform due to time constraints is unreasonable. Especially in light of the evidence from the beneficiary herself, who refutes the claim with her own assertions. Additionally, there is no support in the evidentiary record to support a claim of mental confusion on the part of the Medicaid beneficiary. The beneficiary's medical conditions are listed in the DHS documentation, but there is no mention of mental confusion, senility, dementia, Alzheimers or other condition that could give this ALJ reason to

conclude she suffers from mental confusion. This ALJ simply cannot find the claim offered to refute the evidence from the beneficiary that she did not, in fact, receive the services the Appellant was paid to provide is reliable.

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. The Department submitted documentation of warrants with overpayment amounts issued [redacted] ([redacted] each month). Accordingly, the overpayment amount is [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].

Jennifer Isiogu
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc: [redacted]

Date Mailed: 12/2/2010

***** 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.