

**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. 2010-16717 HHR

Case No. ██████████

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 Department was represented by ██████████, for the Department.

Appellant ██████████ failed to appear. After three attempts to locate ██████████ made by this Administrative Law Judge or the Department were unsuccessful the hearing proceeded.

ISSUE

Did the Department properly pursue Home Help Services payment recoupment against the Appellant r?

FINDINGS OF FACT

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

- 1) From ██████████ through ██████████ the Appellant was authorized to receive Home Help Services (HHS). (Exhibit 1, pages 3-15)
- 2) In ██████████ or ██████████ Appellant's chore provider, ██████████, ██████████ quit working as chore provider for Appellant. (Exhibits 1 and 2).
- 3) From ██████████ through ██████████ Appellant received and cashed HHS payment checks for HHS personal care services that were not provided

by his chore provider. (Exhibit 1, pages 4, 12-14a, 17-35; Exhibit 2)

- 4) On [REDACTED], the DHS Adult Services Worker (ASW) issued an advance action notice to the Appellant that there would be no [REDACTED] HHS payment because the Department had been notified that the Appellant's chore provider had not provided care since [REDACTED] or [REDACTED]. (Exhibit 1, pages 5-7) The notice also informed Appellant that an investigation of the matter had been initiated.
- 5) On [REDACTED], the DHS ASW issued a notice to the Appellant that it had been determined that over-payments for Home Help Services had been made to him for the time period from [REDACTED] to [REDACTED], for a total of [REDACTED]. (Exhibit 1, pages 3-4). The notice indicated, "Provider quit and warrants were cashed" therefore recoupment was initiated. (Exhibit 1, pages 3-4).
- 6) On [REDACTED], this State Office of Administrative Hearings and Rules received Appellant's request for administrative hearing. (Exhibit 1, page 2). The Appellant's request included the statement, "I have witnesses...And for all the months he claimed he was there we were playing a card game spade." (Exhibit 1, page 2).
- 7) On [REDACTED], this State Office of Administrative Hearings and Rules issued a notice of hearing for [REDACTED], to Appellant's address.
- 8) On [REDACTED], the Department received a signed statement from [REDACTED] which stated in part,

"[Appellant] is not helpless. He's a person that can do his own without any help. Like I stated those signatures that were signed on those checks are not mine, someone else sign the checks." (Exhibit 2).
- 9) Appellant failed to appear at the Department of Human Services, as directed in his notice of hearing. After thirty minutes of waiting for Appellant to appear and attempts to locate him, an evidentiary hearing proceeded.

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

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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, 6-1-2009, Pages 1-2 of 4.

The Department provided credible evidence that the Appellant was enrolled in the HHS program and received HHS payments from [REDACTED] to [REDACTED] for personal care services that were not provided by his chore provider. (Exhibit 1, pages 4, 12-14a, 17-35; Exhibit 2)

In [REDACTED] the Department commenced recoupment action. Appellant requested a hearing stating he wanted to contest the recoupment but failed to appear at the hearing. (Exhibit 1, page 2)

The Department is bound by the federal regulation and state policy requirement to recoup overpayments. Based on the substantial credible evidence of record, the Department established that [REDACTED] in overpayments was made to Appellant from [REDACTED] to [REDACTED]. The Department properly seeks recoupment from the Appellant for the overpayment.

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DECISION AND ORDER

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

IT IS THEREFORE ORDERED that:

The Department's action to seek recoupment from the Appellant in the amount of [REDACTED] is **AFFIRMED**.

Lisa K. Gigliotti
Administrative Law Judge
for Janet Olszewski, Director
Michigan Department of Community Health

cc: [REDACTED]

Date Mailed: 4/12/2010

***** 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.