

**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. 2010-19025 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 ██████████. ██████████ appeared on his own behalf. The Department was represented by ██████████, Appeals Review Officer. ██████████, Adult Services Worker, and ██████████-██████████, Adult Services Manger, appeared as witnesses on behalf of the Department.

ISSUE

Did the Department properly pursue recoupment against the Appellant for Home Help Services payments from ██████████?

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) payments. (Exhibit 1, page 4)
- 2) In ██████████, the Appellant also began receiving personal care and homemaking services through the Valley Area Agency on Aging (waiver agency). (Exhibit 1, page 8)
- 3) The waiver agency services continued thorough ██████████. (Exhibit 1, pages 8-23)

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- 4) On [REDACTED] the Adult Services Worker (ASW) became aware of the waiver agency services by following up from a [REDACTED] case review with the Appellant. (Exhibit 1, page 26)
- 5) The ASW testified that the Appellant can not receive both HHS and waiver services in the home at the same time, therefore the Appellant's HHS case closed [REDACTED] and the Department is seeking recoupment for the HHS payments for the months of [REDACTED] through [REDACTED] (Testimony)
- 6) On [REDACTED], the Department issued notice to the Appellant of overpayments for his Home Help case for the time period from [REDACTED] through [REDACTED] (Department Exhibit 1, pages 4-5)
- 7) On [REDACTED], the department issued a certified letter to the appellant requesting he repay [REDACTED] from the overpayments. (Department Exhibit 1, page 6)
- 8) On [REDACTED], the State Office of Administrative Hearings and Rules received the Appellant's Requests for Hearing. (Exhibit 1, pages 2-3)

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 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 Department alleges that the Appellant fraudulently collected payments for HHS and waiver agency services at the same time. The Department testified that the Appellant failed to inform the waiver agency that he was receiving HHS payments and that he failed to disclose the waiver agency services to his ASW at the [REDACTED] review of his Home Help Services case. The Appellant credibly

testified that he was not aware that he could not receive services from both programs at the same time.

The Department cited page 14 of the Adult Services Manual to support their position that the Appellant can not receive services from both programs at the same time.

Services not Covered by Home Help Services

Do **not** authorize HHS payment for the following:

- Supervising, monitoring, reminding, guiding or encouraging (functional assessment rank 2);
- Services provided for the benefit of others;
- Services for which a responsible relative is able and available to provide;
- Services provided free of charge;
- Services provided by another resource at the same time
- Transportation - See Program Administrative Manual (PAM) 825 for medical transportation policy and procedures.
- Money management, e.g., power of attorney, representative payee;
- Medical services;
- Home delivered meals;
- Adult day care.

*Adult Services Manual (ASM 363) 9-1-2008,
Pages 14-15 of 24*

The Department's policy only states that HHS payments can not be authorized for services provided by another resource at the same time. This does not state that an individual can not receive services through the HHS program and a waiver agency at the same time. Instead, Department policy specifies "HHS may be authorized when the client is receiving other home care services if the services are not duplicative (same service for same time period)." Adult Services Manual (ASM 363) 9-1-2008 page 5 of 24. Therefore, it is necessary to compare the actual services provided under each program to determine whether overpayment occurred. The Department proposes to recoup the entire amount of each HHS payment made for the services provided between ██████████ as overpayment. The payments were made by warrants issued between ██████████. (Exhibit 1, page 4)

Under the HHS program, the Department authorized a total of 37 hours and 20 minutes per month to cover the tasks of grooming, dressing, mobility and shopping seven days per week as well as medication, housework, laundry, and meal preparation three days per week. (Exhibit 1, page 7) The waiver program initially authorized personal care services, described as "assist with bathing, light meal prep, dressing, personal hygiene, assist in and out of the shower, med reminders as needed" and housemaker services,

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described as “dust vacuum, sweep, mop, clean bathroom, make and change bed linens, laundry, light meal prep, dishes, errands” (Exhibit 1, page 8) The times and days authorized for these services changed over the course of several service orders. (Exhibit 1, pages 8-23) It appears the personal care services were authorized for 30 minutes per day initially for one per week but eventually up to three days per week. The homemaker services were initially authorized for 1 ½ hours once a week, then 3 ½ hours once a week, then back to 1 ½ hours but up to three days per week. (Exhibit 1, pages 8-13, 16-19, and 22-23)

It is clear that not all of the authorized HHS hours were duplicated by the waiver services. First, the overpayment period begins on [REDACTED] and the waiver agency documentation indicates that the Appellant did not begin receiving waiver services until [REDACTED]. (Exhibit 1, pages 4 and 8) The Department can not recoup the entire HHS payment for [REDACTED] when the Appellant only received one day of waiver services in [REDACTED]. Second, it is clear that the Appellant received more hours of assistance under the HHS program (37 hours and 20 minutes per month) than he received in waiver services (at most 6 hours per week or about 24 hours per month). Therefore, not all of the HHS services could have been duplicated by waiver services. For example, the task of mobility was included under the HHS program but is not included in the waiver services. Accordingly, there can be no duplication of services for the task of mobility. Similarly, bathing was included under the waiver agency personal care services tasks but not the HHS program.

Further, the Department can not establish an actual duplication of services, i.e. same task same time period, with the submitted documentation. The waiver agency documentation shows that the Appellant received the homemaker and personal care services one to three days per week listing the specific the day of the week and time the service was to be provided. (Exhibit 1, pages 8-13, 16-19, and 22-23) The HHS program does not specify what three days of the week or what times medication, housework, laundry, and meal preparation were performed. At most, the Appellant received assistance three days per week under each program for medication, housework, laundry, and meal preparation assistance. However, as there are seven days in a week and services were only authorized for a total of six days at the maximum, it is possible that the services the assistance was performed on separate days for each program and there was no actual duplication of services.

It is also not clear that the waiver agency chore provider was actually providing all of the listed tasks for each category. This ALJ finds it difficult to believe that a chore provider could accomplish all of the listed personal care services in the authorized 30 minutes per day. (Exhibit 1, page 8) This is a very short time frame to cover bathing, personal hygiene, dressing, light meal preparation and medication reminders. Possibly, the description includes all allowed tasks under this service category and the provider did not actually perform all of them. This is supported by the Appellant’s credible testimony that the waiver services chore provider never assisted him with bathing because he would have been uncomfortable with a young lady assisting him with this task. The Appellant testified that the waiver agency chore provider mostly worked in the kitchen and cleaning. Light meal preparation is listed in the descriptions for both the personal

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care services and the housemaker services. If the waiver services chore provider only performed light meal preparation of the listed personal care services and various housekeeping chores, which would be consistent with the number of hours waiver services were authorized, there was no duplication of the HHS hours approved for grooming and dressing.

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department did not properly seek recoupment of [REDACTED] from the Appellant. The Department has not established that the entire amount of each monthly HHS payment for services provided between [REDACTED] was an overpayment. The Department has not presented sufficient evidence to determine that services were actually duplicated, meaning the same task was covered for the same time period under both programs.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department did not properly pursue recoupment against the Appellant.

IT IS THEREFORE ORDERED that:

The Department's decision to seeking recoupment is REVERSED.

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

cc:

[REDACTED]

Date Mailed: 5/4/2010

***** 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.