

**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. 2010-27595 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. ██████████, Financial Analyst, appeared as witnesses 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) The Appellant was the authorized home help provider for her daughter, a Medicaid beneficiary. (Exhibit 1, page 21)
- 2) The Appellant is the plenary guardian for her daughter, an individual with developmental disability. (Exhibit 1, page 45)
- 3) DHS policy requires tasks of housework, laundry, meal preparation and shopping to be prorated if others are living in the home. (Exhibit 1, pages 69-71)

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- 4) On [REDACTED], the Department of Human Services Adult Services Worker (ASW) issued an Advance Negative Action Notice indicating that the Home Help Services payments were being reduced because there are three people residing in the home, based on the applications filed for the Food Stamp program. (Exhibit 1, page 3)
- 5) On [REDACTED] the ASW issued a letter to the Appellant indicating there was an overpayment for the period of [REDACTED] through [REDACTED] in the amount of \$ [REDACTED]. The letter notes that the Appellant consistently reported only she and her daughter were living in the home, but the filed applications indicate the Appellant's son has also been living in the home. (Exhibit 1, page 7)
- 6) 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 there was a third person living in the home. The letter indicated that recoupment would be sought from the Appellant, who was the provider. (Exhibit 1, page 6)
- 7) On [REDACTED], the Department of Community Health issued a certified letter to the Appellant requesting she repay \$ [REDACTED] to the Home Help Program. (Department Exhibit 1, page 5)
- 8) On [REDACTED], the State Office of Administrative Hearings and Rules received the Appellant's written hearing request. (Exhibit 1, pages 18-19)

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.

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In the present case, the Appellant was authorized as the Home Help Services provider for her daughter. (Exhibit 1, page 21) The letters prepared by the ASW indicate that the Home Help Payments prior to [REDACTED] were authorized based upon the Appellant's reports that only she and her daughter resided in the home. (Exhibit 1, pages 3 and 7) Accordingly, the Home Help Services hours authorized for housework shopping, laundry and meal preparation would have been prorated for a household composition of two persons.

The Department has presented evidence that multiple applications were filed with the Department of Human Services for medical and food assistance indicating that the Appellant's son also resided in the home. These applications were signed by the Appellant and/or her son between [REDACTED] and [REDACTED] (Exhibit 1, pages 8-17) Accordingly, the Home Help Services hours authorized for housework shopping, laundry and meal preparation should have been prorated for a household composition of three persons. The ASW issued the Advance Negative Action Notice on [REDACTED] to correct the Home Help Services payment effective [REDACTED]. (Exhibit 1, page 3) The Department calculated the difference between Home Help Payments based on the household composition of two instead to three persons between [REDACTED] and [REDACTED] to determine the over issuance amount of \$ [REDACTED]. (Exhibit 1, page 7)

The Appellant testified that her son did not live in the home the entire time period at issue. The Appellant explained that her son was in and out of town. The Appellant acknowledged that she helped her son out and that he did stay in the home from time to time. However, the Appellant could not state what time periods her son was in the home and testified that she could not honestly answer where else her son resided.

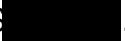
The Department has presented sufficient evidence to support the recoupment action for the time period of [REDACTED] and [REDACTED]. The copies of assistance applications filed between [REDACTED] and [REDACTED] document that the Appellant and her son repeatedly reported that he was also living in the home. The Appellant was unable to provide any specific information regarding the time periods her son was out of town and residing elsewhere.

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 \$ .

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

cc:



Date Mailed: 6/21/2010

***** 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.