

**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. 2010-55573 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. ██████████ was present and testified on behalf of the Appellant.

The Department was represented by ██████████. ██████████, appeared as a witness on behalf of the Department.

ISSUE

Did the Department properly pursue recoupment against the Appellant?

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 authorized to receive Home Help Services (HHS) from her provider.
- 2) The Appellant had medical changes requiring additional services be rendered, via the HHS program.
- 3) The Appellant's worker authorized additional services be provided to the Appellant.
- 4) The Appellant's medical condition hereafter improved and some services were no longer provided by her chore provider beginning ██████████.

- 5) The HHS logs returned by the Appellant and her provider for the months of ██████████ reflect assistance with grooming and dressing were no longer provided to the Appellant.
- 6) The Appellant's provider was paid for the tasks of grooming and dressing for ██████████, in inadvertent error.
- 7) The Appellant's provider was inadvertently overcompensated ██████████ for tasks she did not assist the Appellant with in ██████████.
- 8) On ██████████, the Appellant was notified by the DHS Adult Services Worker that she had been overpaid in the amount of ██████████ for services to the Medicaid beneficiary that had not been provided.
- 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.

Note: Local offices do not need to make a determination of whether the overpayment is willful or non-willful. The Reconciliation and Recoupment Section of the Bureau of Accounting will be responsible for referrals to the OIG.

3. Administrative Overpayments:

a. A computer or mechanical process may fail to generate the proper amount of payment to the client or the provider and an over payment may occur. The department will recoup the overpayment from the provider or client, depending on who was overpaid.

b. Specialist error may cause authorization of more service than the client is entitled to receive. The authorization will cause the provider to provide, in good faith, these services. In these instances there will be no recoupment.

However, in situations where specialist error causes either clients or providers to receive more payment than entitled to without the provision of the extra service, recoupment shall take place.

SRM 181 6-1-2007, Pages 1-2 of 4.

In the present case, it is not material whether the Appellant notified the worker she was no longer receiving grooming and dressing assistance or not. This is a contested fact. Given the policy stated above, even if the Appellant established the worker was the one who made the error and authorized payment for those services, the logs reflect grooming and dressing assistance were not rendered in [REDACTED]. It is uncontested payment for those tasks during that time period was remitted to the Appellant and her provider, thus it is necessary according to policy for the Department to recoup the over payment

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. The Department submitted documentation of warrants with overpayment amounts issued [REDACTED] for excess payment totaling [REDACTED]. 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.

[REDACTED]
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Decision and Order

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: [REDACTED]

***** 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.