

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

P.O. Box 30763, Lansing, MI 48909
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IN THE MATTER OF:

██████████,

Appellant,

_____ /

Docket No. 2011-51505 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 Appellant, appeared on her own behalf. ██████████, friend and neighbor, and ██████████, friend, appeared as witnesses for the Appellant. The Department was represented by ██████████, Appeals Review Officer. ██████████, Adult Services Worker, appeared as a witness on behalf of the Department.

ISSUE

Did the Department properly pursue recoupment against the Appellant for Home Help Services for payments for the time period of ██████████, through ██████████?

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 provided Home Help Services (HHS) to a Medicaid beneficiary, ██████████. (Uncontested)
2. The Appellant had been receiving Home Help Services with a monthly care cost of ██████████. (Exhibit 1, pages 9 and 19)
3. On ██████████, the Department issued an Advance Negative Action Notice indicating the Home Help Services payments for ██████████ would be reduced to ██████████ effective ██████████. (Exhibit 1, page 10)
4. On ██████████, the Appellant filed a hearing request on behalf of ██████████, contesting the reduction. The hearing request was resubmitted

- on ██████████, with documentation verifying the Appellant is ██████████
██████████ Guardian. (Exhibit 1, page 10)
5. On ██████████, a hearing was held regarding the reduction to ██████████
██████████ Home Help Services Payments. (Exhibit 1, page 9)
 6. On ██████████, a Decision and Order was issued partially reversing the
Department's determination to reduce the Appellant's Home Help Services
payments. The reductions were upheld, but they could not be made
effective any earlier than 10 days from the ██████████, Advance
Negative Action Notice. (Exhibit 1, pages 9-18)
 7. While the appeal was pending, the Department suspended the proposed
reduction and ██████████' Home Help Services payments continued at
██████████ per month. (Exhibit 1, page 19)
 8. The Home Help Services payments for ██████████ were reduced to
██████████ effective ██████████. (Exhibit 1, page 19)
 9. On ██████████, the Department issued a letter indicating there had
been an overpayment of ██████████ for the time period of ██████████
██████████, to ██████████, specifically for warrants issued between ██████████
██████████, and ██████████. The letter indicated the reason for the
overpayment was the hearing decision. (Exhibit 1, pages 5-6)
 10. On ██████████, the Department of Community Health issued a
certified letter requesting repayment of ██████████ to the Home Help
Program. (Exhibit 1, page 7)
 11. On ██████████, the Appellant's written hearing request was received.
(Exhibit 1, page 4)
 12. On ██████████, the Department of Community Health issued a
second certified letter requesting repayment of ██████████ to the Home
Help Program. (Exhibit 1, page 8)

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.

Note: Two party checks used in independent living services (ILS) are always to be viewed as client payments and therefore any overpayments involving a two party check are to be treated as client overpayment.

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.

When willful overpayment of \$500.00 or more occur, an DHS-834, Fraud Investigation Request, is completed and sent to the Office of Inspector General. **Note:** See PAM Items 700-720.

No recoupment action is taken on cases that are referred for investigation while the investigation is being conducted.

Willful overpayments of \$499.00 or less are treated as non-willful client error, unless the policy of the local county prosecutor dictates otherwise. **Note:** See PAM Items 700-720 for investigation of alleged fraud.

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.

All instances of non-willful client error or willful client error of \$499 or less, will be recouped. No fraud referral is necessary.

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-wilful. 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 overpayment 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 wither clients or providers to receive more payment than entitled to **without** the provision of the extra service, recoupment shall take place.

4. *Hearing related overpayments: When a client makes a timely request for hearing, the proposed negative action is delayed until the hearing decision is issued, the request is withdrawn, or the client fails to show. If the decision upholds the department; the client withdraws; or the client fails to appear at the hearing the overpayment caused by the suspense period is to be recouped. (Emphasis added by ALJ)*

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

The issue in the present case is a hearing related overpayment. The Appellant had been receiving Home Help Services with a monthly care cost of ██████████. (Exhibit 1, pages 9 and 19) On ██████████, the Department issued an Advance Negative Action Notice indicating the Home Help Services payments for ██████████ would be reduced to ██████████ effective ██████████. (Exhibit 1, page 10) On ██████████, the Appellant filed a hearing request on behalf of ██████████, contesting the reduction. The Hearing Request was resubmitted on ██████████, with documentation verifying the Appellant is ██████████' Guardian. (Exhibit 1, page 10) On ██████████, a hearing was held regarding the reduction to ██████████' Home Help Services Payments. (Exhibit 1, page 9) On ██████████, a Decision and Order was issued partially reversing the Department's determination to reduce the Appellant's Home Help Services payments. The reductions were upheld, but they could not be

made effective any earlier than 10 days from the [REDACTED], Advance Negative Action Notice. (Exhibit 1, pages 9-18) While the appeal was pending, the Department suspended the proposed reduction and [REDACTED] Home Help Services payments continued at [REDACTED] per month. (Exhibit 1, page 19) The Home Help Services payments for [REDACTED] were reduced to [REDACTED] effective [REDACTED]. (Exhibit 1, page 19)

The Department issued notice that it is seeking recoupment of [REDACTED] for the time period of [REDACTED] to [REDACTED], for the over-issuance caused by the continuation of Home Help Services payments without reduction while the appeal was pending. The warrants pertaining to the Home Help Services payments for this time period were dated between [REDACTED], and [REDACTED]. (Exhibit 1, pages 5-6)

The Appellant contests the recoupment because she disagrees with the reduction. She also indicated there are issues related to the Appellant's incontinence supplies. As discussed during the [REDACTED], hearing proceedings, the present appeal is limited to the recoupment action. This is not a re-hearing regarding the [REDACTED] reduction nor can any ongoing Home Help Services payments can be reviewed as part of this appeal. The Appellant can request an increase in the Home Help Services payments for [REDACTED] at any time or during her next periodic case review. If the Appellant is not satisfied with the Department's action she may file a new hearing request at that time. Additionally, a separate hearing request could also be filed regarding any issues with incontinence supplies [REDACTED] receives as a Medicaid benefit.

The Appellant testified that she has earned the payments she received caring for [REDACTED] and she can not afford to pay back the overpayment amount. The testimony of the Appellant's friends supported the excellent care the Appellant has been providing for [REDACTED].

The Department's policy specifically addresses recoupment of hearing related overpayments. The Department properly sought recoupment from the Appellant/Provider of [REDACTED], the portion of the Home Help Services payments issued at the non-reduced monthly amount while the appeal contesting the reduction was pending. The time period of the overpayment, [REDACTED], to [REDACTED], complies with the [REDACTED], Decision and Order indicating that the reductions could not be made effective any earlier than 10 days from the [REDACTED], Advance Negative Action Notice. The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly sought recoupment 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 [REDACTED].

Colleen Lack
Administrative Law Judge
for Olga Dazzo, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 12/1/2011

***** NOTICE *****

The Michigan Administrative Hearing System 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. Michigan Administrative Hearing System 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.