

**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. 2011-8126 HHR
Case No. 3189033

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 ██████████, ██████████, and ██████████, appeared as witnesses on behalf of the Department.

ISSUE

Did the Department properly pursue recoupment against the Appellant for Home Help Services for the months of ██████████?

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).
- 2) The Appellant married on ██████████ (Uncontested)
- 3) Under Department of Human Services policy Home Help Services can not be authorized when a responsible relative is able and available to provide the services. *Adult Services Manual (ASM 363) 9-1-2008, Pages 5 and 14 of 24.* (Exhibit 1, pages 12 and 13)
- 4) The Adult Services Glossary defines a responsible relative as a person's spouse or a parent of an unmarried child under age 18. *Adult Services Glossary (ASG Glossary) 12-1-2007, Page 5 of 6.*

Docket No. 2011-8126 HHR
Hearing Decision & Order

- 5) On [REDACTED], the ASW issued a letter notifying the Appellant that an overpayment occurred for the time period of [REDACTED], totaling \$ [REDACTED] because of the Appellant's marriage. (Exhibit 1, page 7)
- 6) 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 6)
- 7) On [REDACTED], the Department of Community Health issued a second certified letter to the Appellant requesting she repay \$ [REDACTED] to the Home Help Program. (Department Exhibit 1, pages 4-5)
- 8) On [REDACTED], the State Office of Administrative Hearings and Rules received the Appellant's written hearing request. (Exhibit 1, page 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 is seeking recoupment for the Home Help Services payments the Appellant received for services rendered in [REDACTED],

██████████
Docket No. 2011-8126 HHR
Hearing Decision & Order

because of the Appellant's ██████████, marriage. Under Department of Human Services policy, Home Help Services can not be authorized when a responsible relative is able and available to provide the services. *Adult Services Manual (ASM 363) 9-1-2008, Pages 5 and 14 of 24.* (Exhibit 1, pages 12 and 13) The Adult Services Glossary defines a responsible relative as a person's spouse or a parent of an unmarried child under age 18. *Adult Services Glossary (ASG Glossary) 12-1-2007, Page 5 of 6.*

The policy notes that unavailable means absence from the home, for employment or other legitimate reasons. Unable means the responsible person has disabilities of his/her own which prevent care giving. These disabilities must be documented/verified by a medical professional on the DHS-54A (Medical Needs form). Adult Services Manual (ASM 363) 9-1-2008, Page 5 of 24. It was uncontested that the Appellant's ██████████ is not disabled. The Appellant testified that her ██████████ worked a swing shift at that time, and she did not know what hours he would be working day to day. The Appellant further stated that she and her ██████████ have split, but there has not been a legal separation or divorce yet.

The Department considered that the Appellant's ██████████ worked, but found he was still available to provide the authorized services, housework, shopping, laundry and meal preparation. The ██████████ explained that these services could be performed before or after the workday. (██████████ Testimony) The Department also explained that they would need documentation of a legal separation or divorce for the Appellant to qualify for future Home Help Services. ██████████ (Testimony)

The Department has presented sufficient evidence to support the recoupment action for the time period of ██████████ and ██████████. The Appellant was not eligible for Home Help Services rendered after her ██████████ marriage because her ██████████ was able and available to provide the authorized services.

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 of ██████████.

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.

IT IS THEREFORE ORDERED that:

The Department's decision in seeking recoupment is **AFFIRMED**. The overpayment amount is ██████████.

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

Docket No. 2011-8126 HHR
Hearing Decision & Order

cc:



Date Mailed: 3/15/2011

***** 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.