

**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. 2012-39349 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, appeared as a witness for the Appellant. The Department was represented by ██████████, Appeals Review Officer. ██████████, Adult Services Worker ("ASW"), appeared as a witness for 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 is a Medicaid beneficiary who was authorized for Home Help Services from ██████████, through ██████████. (Exhibit 1, page 13).
2. The Appellant was married to ██████████ on ██████████. (Exhibit 1, page 31)
3. On ██████████, the Appellant applied for Home Help Services. Regarding her living situation, the Appellant indicated she lived with one roommate to help pay rent and did not mark that she lived with a spouse or if the spouse was disabled. (Exhibit 1, pages 58-59)
4. On or about ██████████, an ASW completed a comprehensive

assessment to determine the Appellant's eligibility for the Home Help Services Program. The information provided to the ASW indicated the Appellant was divorced and lived alone. (Exhibit 1, page 52)

5. On or about [REDACTED] [REDACTED] [REDACTED], an ASW completed another comprehensive assessment to determine the Appellant's ongoing eligibility for the Home Help Services Program. The information provided to the ASW indicated the Appellant was divorced and lived alone. (Exhibit 1, page 46)
6. On or about [REDACTED] [REDACTED] [REDACTED], the Appellant completed a Redetermination form for the Food Assistance Program listing [REDACTED] [REDACTED] was a friend/roommate that resided in the home with her, paid rent and half of utilities but did not want to disclose any information. (Exhibit 1, pages 39-42)
7. On [REDACTED], the Appellant submitted a signed Change Report to the Department of Human Services indicating her husband moved out [REDACTED]. (Exhibit 1, pages 37-38)
8. Pursuant to a [REDACTED] hearing in the [REDACTED] Circuit Court- Family Division, the Appellant was divorced. (Exhibit 1, pages 32-33)
9. The Appellant was married the entire period she received Home Help Services, [REDACTED], through [REDACTED].
10. Under Department policy, Home Help Services for the Appellant could only be authorized for those services or times which a responsible relative is unavailable or unable to provide. 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. Adult Services Manual (ASM 363) 9-1-2008, Page 5 of 24.
11. 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.
12. On [REDACTED], an ASW prepared a letter to the Appellant stating there had been an overpayment of \$ [REDACTED] for her Home Help case for the time period of [REDACTED], through [REDACTED] based on the spouse in the home. There are indications the overpayment amount was corrected to \$ [REDACTED] and the notice was amended. (Exhibit 1, pages 21-25)
13. On [REDACTED], an ASW prepared a letter to the Appellant stating

there had been an overpayment of \$ [REDACTED] for her Home Help case for the time period of [REDACTED], through [REDACTED]. (Exhibit 1, page 20)

14. On [REDACTED], the Department of Community Health issued a certified letter to the Appellant requesting repayment of \$ [REDACTED] to the Home Help Program. (Exhibit 1, page 7)
15. On [REDACTED], ASW Helwig issued a letter to the Appellant stating there had been an overpayment of \$ [REDACTED] for her Home Help case for the time period of [REDACTED], through [REDACTED]. (Exhibit 1, pages 15-16)
16. On [REDACTED], the Department of Community Health issued a certified letter to the Appellant requesting repayment of \$ [REDACTED] to the Home Help Program. (Exhibit 1, page 8)
17. On [REDACTED], the Appellant's hearing request was received by the Michigan Administrative Hearing System. (Exhibit 1, page 5)
18. On [REDACTED], the Department of Community Health issued a certified letter, Final Notice, to the Appellant requesting repayment of \$ [REDACTED] to the Home Help Program. (Exhibit 1, page 9)
19. On [REDACTED], ASW [REDACTED] issued a letter to the Appellant stating there had been an overpayment of \$ [REDACTED] for her Home Help case. (Exhibit 1, pages 11-12)

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.

Adult Services Manual (ASM) 165, 11-1-2011, addresses the issue of recoupment:

GENERAL POLICY

The department is responsible for correctly determining accurate payment for services. When payments are made in an amount

greater than allowed under department policy, an overpayment occurs.

When an overpayment is discovered, corrective actions must be taken to prevent further overpayment and to recoup the overpayment amount. The normal ten business day notice period must be provided for any negative action to a client's services payment. An entry must be made in the case narrative documenting:

- The overpayment.
- The cause of the overpayment.
- Action(s) taken to prevent further overpayment.
- Action(s) taken to initiate the recoupment of the overpayment.

FACTORS FOR OVERPAYMENTS

Four factors may generate overpayments:

- Client errors.
- Provider errors.
- Administrative errors.
- Department upheld at an administrative hearing.

Appropriate action must be taken when any of these factors occur.

Client Errors

Client errors occur whenever information given to the department, by a client, is incorrect or incomplete. This error may be willful or non-willful.

Willful client overpayment

Willful client overpayment occurs when all of the following apply:

- A client reports inaccurate or incomplete information or fails to report information needed to make an accurate assessment of need for services.
- The client was clearly instructed regarding their reporting responsibilities to the Department (a signed DHS-390 is evidence of being clearly instructed).
- The client was physically and mentally capable of performing their reporting responsibilities.

- The client cannot provide a justifiable explanation for withholding or omitting pertinent information.

When willful overpayments of \$500.00 or more occur, a DHS-834, Fraud Investigation Request, is completed and sent to the Office of Inspector General; see BAM Items 700 - 720.

No recoupment action is taken on cases that are referred to OIG for investigation, while the investigation is being conducted. The specialist must:

- Complete the DHS-566, Recoupment Letter for Home Help.
- Select **Other** under the reason for overpayment. Note that a fraud referral was made to the Office of Inspector General.
- Send a copy of the DHS-566, with a copy of the DHS-834, Fraud Investigation Request to the Michigan Department of Community Health Medicaid Collections unit at:

MDCH Bureau of Finance
Medicaid Collections Unit
Lewis Cass Building, 4th Floor
320 S. Walnut
Lansing, Michigan 48909

- **Do not** send a copy of the recoupment letter to the client or provider. MDCH will notify the client/provider after the fraud investigation is complete.

Note: When willful overpayments under \$500 occur, initiate recoupment process.

Non-Willful Client Overpayment

Non-willful client overpayments occur when either:

- The client is unable to understand and perform their reporting responsibilities to the department due to physical or mental impairment.
- The client has a justifiable explanation for not giving correct or full information.

All instances of non-willful client error must be recouped. No fraud referral is necessary.

ASM 165 11-1-2011,
Pages 1-2 of 6.

The Appellant was married the entire period she received Home Help Services, ██████████, through ██████████. (Exhibit 1, pages 13, and 31-33) During the comprehensive assessments, the information provided to the ASW was that the Appellant was divorced and lived alone. (Exhibit 1, pages 46 and 52) The Appellant testified she could not remember if she ever told the ASW about her marriage. The Appellant explained she had not reported her spouse lived in the home because she had a very bad marriage that was on and off and her spouse was in and out of the home. The Appellant also testified her spouse had disabilities and was not able to care for her. (Appellant Testimony)

Under Department policy, Home Help Services for the Appellant could only be authorized for those services or times which a responsible relative is unavailable or unable to provide. 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. Adult Services Manual (ASM 363) 9-1-2008, Page 5 of 24. 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 ASW testified that there was no documentation of the Appellant's spouse's disabilities in the Home Help Services case file. (ASW Testimony)

The Appellant had a responsibility to accurately report information about her situation. The Adult Services, just above the Appellant's signature states:

2. You have the following responsibilities:

- To give full and correct information about your situation. Information you give may need to be verified.
- To report within 10 days to the Department of Human Services if your situation changes.

3. Read the following statement, sign and date the application.

- I WISH TO APPLY FOR SOCIAL SERVICES. I CERTIFY THAT THE INFORMATION I HAVE GIVEN IS CORRECT. I AGREE TO FULFILL THE RESPONSIBILITIES DESCRIBED IN THE RIGHTS, RESPONSIBILITIES AND INFORMATION SECTION ABOVE. IF YOU WISH FINANCIAL OR MEDICAL

ASSISTANCE, ANOTHER APPLICAION IS NEEDED.

(Exhibit 1, page 59)

The documentation indicates the Appellant misrepresented her marital status for the Home Help Services program. (Exhibit 1, pages 31-33, 39-42, 46, 52, and 58) This precluded the Department from determining the spouse's availability and obtaining the required documentation of his disabilities to verify if he was unable to provide care for the Appellant. Accordingly, the Appellant was not eligible for the Home Help Services she received from ██████████ through ██████████ because she was married and there was no determination that her spouse was unavailable or verification that he was unable to care for her.

The Department's policy further indicates that overpayments due to client error, willful or non-willful are to be recouped. The evidence indicates the original ASW followed the procedure for willful client error overpayments over \$██████ and sent a referral to for a fraud investigation. ASW Helwig explained that there were delays and re-submissions. An obsolete version of the DHS-566 form, the letter to the Appellant indicating there was an overpayment, was utilized by the original ASW. Additionally, the full Home Help Services care cost amount, rather than the amount the warrant was issued for after taxes, etc were deducted, was originally incorrectly utilized to determine the overpayment amount. It appears that once the warrant amount information was corrected, there were typographical errors in the years for the overpayment time period and warrant issue dates on the last notice sent to the Appellant. (ASW Testimony and Exhibit 1, pages 10-25)

While the notices sent to the Appellant did have some typographical errors, it is clear the Appellant was provided notice that there had been an overpayment for the Home Help Services she received. Most of these notices showed an incorrectly high overpayment amount. This ALJ has reviewed the screen shots of the Appellant's Home Help Services payment history. For services provided between ██████████ and ██████████, a total of 15 warrants were issued, 7 for \$██████, 5 for \$██████, 1 for \$██████ and 2 for \$██████. (Exhibit 1, pages 17, and 24) Accordingly, the overpayment amount is \$██████.

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 for the payments for Home Help Services for the months of ██████████ through ██████████ totaling \$██████.

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 for Home Help Services for the months of [REDACTED] through [REDACTED].

IT IS THEREFORE ORDERED that:

The Department's decision in seeking recoupment is **AFFIRMED**. The overpayment amount is \$ [REDACTED].

/s/ _____

Colleen Lack
Administrative Law Judge
for James K. Haveman, Director
Michigan Department of Community Health

cc:

[REDACTED]

Date Mailed: 9/13/2012

***** 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.