

**STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
FOR THE DEPARTMENT OF COMMUNITY HEALTH**  
P.O. Box 30763, Lansing, MI 48909  
(877) 833-0870; Fax: (517) 373-4147

IN THE MATTER OF:

**Docket No.** 2013-45059 HHR

██████████

Appellant,

\_\_\_\_\_ /

**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 ██████████ ██████████ sister and Power of Attorney, represented the Appellant. ██████████ Appeals Review Officer, represented the Department. ██████████ Williams, 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 ("HHS") for payments for meal preparation the months of ██████████ ██████████, and ██████████

**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 and was authorized for Home Help Services payments.
2. At each HHS case review, the ASW asked the Appellant if she had a legal Guardian, Power of Attorney, or anything similar. The Appellant never reported to the ASW that her sister was her Power of Attorney. (ASW Testimony)
3. On ██████████, the Department received a medical certification from the Appellant's doctor that documented diagnoses of asthma, hypothyroidism, and diabetes. (Exhibit 1, page 20)

4. On [REDACTED] the Department issued an Advance Negative Action notice to the Appellant stating the HHS payment would be reduced to [REDACTED] effective [REDACTED] based on the Appellant reporting she no longer needed meal preparation assistance during the review of the HHS case. (Exhibit 2, page 4)
5. On [REDACTED], before the reduction went into effect, the Appellant called the ASW and stated she needed meal preparation added back into the HHS authorization temporarily because she had just had a scope procedure on her knee. (Exhibit 1, pages 23-24; ASW Testimony)
6. On [REDACTED], the Department issued a Services Approval Notice to the Appellant stating the HHS payment was increased to [REDACTED] effective [REDACTED] adding meal preparation back in the HHS authorization temporarily. The Notice indicated the Appellant was supposed to call the ASW once she is able to begin making her own meals again. (Exhibit 2, page 2)
7. The monthly authorization for meal preparation HHS hours was [REDACTED]. (Exhibit 2, page 3)
8. On [REDACTED] the Department issued warrant number [REDACTED] to the Appellant and her enrolled HHS provider for [REDACTED] for HHS for the month of [REDACTED] (Exhibit 1, page 27)
9. On [REDACTED], the Department issued warrant number [REDACTED] to the Appellant and her enrolled HHS provider for [REDACTED] for HHS for the month of [REDACTED]. (Exhibit 1, page 28)
10. On [REDACTED] the Department issued warrant number [REDACTED] to the Appellant and her enrolled HHS provider for [REDACTED] for HHS for the month of [REDACTED] (Exhibit 1, page 29)
11. On [REDACTED], the ASW received the provider logs for at least the month of [REDACTED]. The activity of meal preparation was crossed off, but there were also marks for completing this activity each day. (Exhibit 1, page 6)
12. On [REDACTED], the ASW called the Appellant. The Appellant stated her HHS provider was not doing meals for her, and had not cooked or done meal prep since at least [REDACTED], other than one meal about a month ago. (Exhibit 1, page 21; ASW Testimony)

13. On ██████████ the ASW issued a letter to the Appellant indicating there had been an overpayment of ██████████ for the time period of ██████████ to ██████████ specifically for the warrants issued ██████████, ██████████ and ██████████. The letter indicated the reason for the overpayment was the HHS provider did not provide meal assistance. (Exhibit 1, page 30)
14. On ██████████, the Appellant called the ASW and requested her HHS case be closed. (Exhibit 1, page 21)
15. On ██████████, the Department issued an Advance Negative Action Notice to the Appellant terminating HHS effective ██████████ (Exhibit 1, page 6)
16. On ██████████, the Department of Community Health issued a certified letter to the Appellant requesting repayment of ██████████ to the Home Help Program. This letter included notice of the Appellant's right to a hearing to contest the debt. (Exhibit 1, page 31)
17. On ██████████ the hearing request filed on the Appellant's behalf was received by the Department contesting the recoupment action. On ██████████, the Appellant's request for hearing was forwarded to the Michigan Administrative Hearing System. (Exhibit 1, pages 4-13)

### **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.

On [REDACTED], the Department issued an Advance Negative Action notice to the Appellant stating the HHS payment would be reduced to [REDACTED] effective [REDACTED] based on the Appellant reporting she no longer needed meal preparation assistance during the review of the HHS case. (Exhibit 2, page 4)

However, before the reduction went into effect, the Appellant called the ASW on [REDACTED], and stated she needed meal preparation added back into the HHS authorization temporarily because she had just had a scope procedure on her knee. (Exhibit 1, pages 23-24; ASW Testimony)

On [REDACTED], the Department issued a Services Approval Notice to the Appellant stating the HHS payment was increased to [REDACTED] effective [REDACTED], adding meal preparation back in the HHS authorization temporarily. The Notice indicated the Appellant was supposed to call the ASW once she is able to begin making her own meals again. (Exhibit 2, page 2) The monthly authorization for meal preparation HHS hours was [REDACTED]. (Exhibit 2, page 3)

On [REDACTED] the Department issued warrant number [REDACTED] to the Appellant and her enrolled HHS provider for [REDACTED] 9 for HHS for the month of [REDACTED] (Exhibit 1, page 27) On [REDACTED] the Department issued warrant number [REDACTED] to the Appellant and her enrolled HHS provider for [REDACTED] for HHS for the month of [REDACTED] (Exhibit 1, page 28) On [REDACTED] the Department issued warrant number [REDACTED] to the Appellant and her enrolled HHS provider for [REDACTED] for HHS for the month of [REDACTED] (Exhibit 1, page 29)

On [REDACTED], the ASW received the provider logs for at least the month of [REDACTED]. The activity of meal preparation was crossed off, but there were also marks for completing this activity each day. (Exhibit 1, page 6) On [REDACTED] the ASW called the Appellant. The Appellant stated her HHS provider was not doing meals for her, and had not cooked or done meal prep since at least [REDACTED], other than one meal about a month ago. (Exhibit 1, page 21; ASW Testimony)

On [REDACTED], the ASW issued a letter to the Appellant indicating there had been an overpayment of [REDACTED] for the time period of [REDACTED] to [REDACTED] specifically for the warrants issued [REDACTED] and [REDACTED]. The letter indicated the reason for the overpayment was the HHS provider did not provide meal assistance. (Exhibit 1, page 30)

The Appellant contests the recoupment. The Appellant's sister stated it is confusing when the Department issues notices of opposing actions with dates that overlap. The Appellant's sister also noted the lack of control over this program when the Department issues the HHS payments before the provider logs are submitted. The Appellant's sister also testified the provider logs are not accurate in regards to the days the provider marked she was there and what services were completed. The Appellant's sister pointed out the recoupment policy addressing provider errors, which indicates the HHS provider is the one who has to repay the Department. Lastly, the Appellant's sister questioned how the Appellant would be able to pay the Department back because has a limited income. (Sister Testimony)

The ASW credibly testified she asked the Appellant at each review of her HHS case about having a legal Guardian, Power of Attorney, or anything similar. The Appellant never reported to the ASW that her sister was her Power of Attorney. Further, the ASW explained that the diagnoses on the Appellant's medical certification did not indicate any cognitive issued or problems with the Appellant signing documents for herself. (ASW Testimony)

The recoupment policy indicating the HHS provider is to repay the Department is addressing provider errors. The recoupment action in this case is based on the Appellant's error regarding her needs for meal preparation assistance. Accordingly, the Appellant would be responsible for repayment. Initially, the HHS hours for meal preparation were going to be eliminated effective [REDACTED] based on the Appellant reporting she no longer needed meal preparation assistance during the review of the HHS case. (Exhibit 2, page 4) Before this reduction could go into effect, the Appellant called the ASW and reported needed meal preparation again temporarily due to having the scope procedure on her knee. (Exhibit 1, pages 23-24; ASW Testimony) The notice the Department issued [REDACTED] indicating HHS hours were added back in for meal preparation noted this was a temporary increase and that the Appellant should call the ASW once she is able to begin making her own meals again. (Exhibit 2, page 2) The Appellant never called the ASW to report meal preparation assistance was no longer needed. Rather, after receiving the provider logs on [REDACTED], the ASW called the Appellant and the Appellant reported her HHS provider was not doing meals for her, and had not cooked or done meal prep since at least [REDACTED], other than one meal about a month ago. (Exhibit 1, pages 6 and 21; ASW Testimony) By then, the Department had already issued the payments for the Appellant's HHS for [REDACTED], [REDACTED] and [REDACTED] which included meal preparation. (Exhibit 1, pages 27-29) Accordingly, the Department properly sought recoupment of the meal preparation portion of the Home Help Services payments for [REDACTED] through [REDACTED] from the Appellant.

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 the payments for HHS hours for meal preparation for the months of [REDACTED] [REDACTED] and [REDACTED] totaling [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.

**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

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

CL/db

cc: [REDACTED]

**\*\*\* 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.