

**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. 2013-49532 HHS

██████████

██████████

██████████

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 ██████████. ██████████, former Case Manager, represented the Appellant. ██████████, mother and Guardian, appeared as a witness for the Appellant. ██████████, Appeals Review Officer, represented the Department. ██████████, Adult Services Worker ("ASW"), and ██████████ Adult Services Supervisor, appeared as witnesses for the Department. ██████████, Process Agent, ██████████, also appeared as a witness for the Department.

ISSUE

Did the Department properly suspend the Appellant's Home Help Services ("HHS") authorization?

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 has been authorized for HHS.
2. Both the Appellant's mother and ██████████ were enrolled as HHS providers for the Appellant. (Exhibit 1, pages 18-21)
3. On ██████████, the Appellant's mother called the ASW about a check. During that call, the assistance provided by ██████████ and the Appellant's mother was also discussed. The Appellant's mother stated she works Monday through Friday from 6:45 am to 5:00 pm and indicated ██████████ staff assists the Appellant during the week before and after school. The Appellant's mother also described the types of assistance she provides for the Appellant. (Exhibit 1, page 14; ASW Testimony)

4. On ██████████ the ASW called ██████████ and spoke with the Process Agent, who reported there is no other provider for the Appellant's case besides the Appellant's mother. (Exhibit 1, page 13; ASW Testimony)
5. On ██████████, the ASW called the Appellant's mother back, who initially reported that the Process Agent was the person that came to the house Monday through Friday from ██████████. The Appellant's mother acknowledged later in the call that she had not been truthful with the ASW. (Exhibit 1, page 13; ASW Testimony)
6. Based on the Appellant's mother appearing to receive HHS checks directly from the state as well as through ██████████ for the same work for the Appellant, and the Appellant's mother being untruthful during the ██████████ phone conversations, the ASW concluded that the Appellant's HHS authorization should be suspended pending investigation. (Exhibit 1, page 13; ASW Testimony)
7. On ██████████, the Department sent the Appellant an Advance Action Notice, which informed him that effective ██████████ the HHS case, would be suspended. (Exhibit 1, pages 5-7)
8. On ██████████, the Appellant's request for hearing was received by the Michigan Administrative Hearing System. (Exhibit 1, page 4)

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 physician and may be provided by individuals or by private or public agencies.

Adult Services Manual (ASM) 165, addresses overpayments and fraud referrals:

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.

*Adult Services Manual (ASM) 165, 11-1-2011,
Pages 1-2 of 6
(Underline added by ALJ)*

Adult Services Manual (ASM) 150, addresses notification of eligibility determinations, including suspensions:

Advance Negative Action Notice (DHS-1212)

The DHS-1212, Advance Negative Action Notice, is used and generated on ASCAP when there is a reduction, suspension or termination of services. Appropriate notations must be entered in the comment section to explain the reason for the negative action.

- Reduced - decrease in payment.
- Suspended - payments stopped but case remains open.
- Terminated - case closure.

Negative Actions Requiring Ten Day Notice

The effective date of the negative action is ten business days **after** the date the notice is mailed to the client. The effective date must be entered on the negative action notice.

*Adult Services Manual (ASM) 150, 11-1-2011,
Page 2 of 4.*

The Code of Federal Regulations, Chapter 42 also addresses the Appellant's rights with respect to Advance Negative Notice of an agency action:

§ 431.211 Advance notice.

The State or local agency must mail a notice at least 10 days before the date of action, except as permitted under §§ 431.213 and 431.214 of this subpart.

§ 431.214 Notice in cases of probable fraud.

The agency may shorten the period of advance notice to 5 days before the date of action if—

- (a) The agency has facts indicating that action should be taken because of probable fraud by the recipient; and
- (b) The facts have been verified, if possible, through secondary sources.

The Appellant is a Medicaid beneficiary who has been authorized for HHS. Both the Appellant's mother and ██████████ were enrolled as HHS providers for the Appellant. (Exhibit 1, pages 18-21)

On ██████████, the Appellant's mother called the ASW about a check. During that call, the assistance provided by ██████████ and the Appellant's mother was also discussed. The Appellant's mother stated she works Monday through Friday from 6:45 am to 5:00 pm and indicated ██████████ staff assists the Appellant during the week before and after school. The Appellant's mother specified that ██████████ arrives around 6:30 am, they bathe groom and dress the Appellant as well as place him on the bus for school at 7:00 am. Further, after school, ██████████ gets the Appellant from the bus and supervises him until his mother arrives home from work. The Appellant's mother also described the types of assistance she provides for the Appellant. (Exhibit 1, page 14; ASW Testimony)

On ██████████, the ASW called ██████████ and spoke with the Process Agent, who reported there is no other provider for the Appellant's case besides the Appellant's mother. (Exhibit 1, page 13; ASW Testimony)

On ██████████, the ASW called the Appellant's mother back after speaking with the Process Agent. The Appellant's mother initially reported that the Process Agent was the person that came to the house Monday through Friday from ██████████. The ASW let the Appellant's mother know that the Process Agent denied going to the home to do any home care for this case. The Appellant's mother then acknowledged that she had not been truthful with the ASW. (Exhibit 1, page 13; ASW Testimony)

Based on the Appellant's mother appearing to receive HHS checks directly from the state as well as through ██████████ for the same work for the Appellant, and the Appellant's mother being untruthful during the ██████████ phone conversations, the ASW concluded that the Appellant's HHS authorization should be suspended pending investigation. (Exhibit 1, page 13; ASW Testimony)

The Process Agent testified that he was never a paid provider for the Appellant. Further, to the best of his knowledge, the Appellant's mother was the only paid provider through ██████████. (Process Agent Testimony)

The Appellant disagrees with the suspension. The Appellant's former Case Manager testified that the ASW assigned at the time the Appellant's HHS case set it up knowing the Appellant's mother was also the caregiver through ██████████ (Former Case Manager Testimony) The Case Manager submitted documentation from the initial HHS approval and wanted it considered for the investigation. (Exhibit 2, pages 1-3)

While it is noted that the ASW made the fraud referral to the Office of Inspector General ("OIG") in accordance with the above cited Adult Services Manual (ASM) 165 policy, as stated during the ██████████ telephone hearing proceedings, the fraud investigation itself is beyond the scope of this hearing. (See Exhibit 1, pages 12 and 17)

The Department provided sufficient evidence to support the suspension of the Appellant's HHS authorization pending a fraud investigation. The evidence indicates the Appellant's mother was being paid both directly by the Department and through ██████████ ██████████ for HHS services for the Appellant. Further, the evidence indicates the Appellant's mother was not truthful in talking to the ASW about HHS services for the Appellant provided through ██████████. The ASW was concerned about HHS payment over issuance and potential fraud and made the referral to the OIG in accordance with Department policy. Further, the Department provided more than sufficient advance notice of the suspension of the Appellant's HHS authorization based on probable fraud. (Exhibits 1 and 2; Testimony of ASW and Process Agent) Accordingly, the Department's determination to suspend the Appellant's HHS authorization is upheld based on the available information.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly suspended the Appellant's HHS authorization based on the available information.

[REDACTED]
Docket No. 2013-49532 HHS
Decision and Order

IT IS THEREFORE ORDERED THAT:

The Department's decision is AFFIRMED.

/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. The 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.