

**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. 2014-007319 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, an in-person hearing was held on ██████████. Appellant appeared and testified. ██████████ appeared as a witness.

██████████oot, Appeals Review Officer, represented the Department of Community Health (Department). The Department had three witnesses: ██████████, Adult Services Worker (ASW), ██████████, Adult Services Supervisor (ASS), and ██████████, Financial Manager.

**ISSUE**

Did the Department properly pursue recoupment against Appellant for the meal preparation portion of warrants issued from ██████████ through ██████████ on the grounds that meal preparation was included in Appellant's rent as Appellant received 3 meals per day, 7 days per week?

**FINDINGS OF FACT**

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. Appellant is a recipient of HHS with the Michigan Department of Human Services.
2. During a redetermination home visit with the customer on ██████████ the worker documented that Appellant's rent, includes 3 meals per day, 7 days per week in the building he resides in. (Exhibit A.28)
3. Appellant does not have a kitchen. Appellant has a fridge, crock pot, and electric roaster. Appellant receives food stamps.

4. The prior worker had included meal preparation in the HHS grant, in the amount of \$██████████3 per month. (Testimony) The Department indicated that the error was a 'specialist error.'
5. The Department notes indicated that it verified on 2 occasions that Appellant does in fact eat the meals provided by his rental agreement. (Exhibit A.26)
6. On ██████████ the Department issued 2 notices indicating that Appellant was over-issued meal preparation calculated at \$██████████ per month in his HHS grant totaling \$██████████ requesting repayment/recoupment, for the period from ██████████ through ██████████. (Exhibit A)
7. On ██████████ Appellant requested an administrative hearing. (Exhibit A.2) Appellant attached a letter from Romancare Health Services-visiting doctors/nurse association-that states that Appellant is reliant upon his ability to prepare meals for himself from within his apartment unit "...when his oxygen supply has been exhausted..." (Exhibit A.5)
8. Department documentation indicates that as of the home visit on ██████████, Appellant "...had several tanks on the floor..." (Exhibit A.28)
9. Appellant did not commit any willful, fraudulent, or intentional action that led to the overpayment.

## **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.

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**

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

Appropriate action must be taken when any of these factors occur. Four factors may generate overpayments:

#### **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.

## **Administrative Errors**

### ***Computer or Mechanical Process Errors***

A computer or mechanical process may fail to generate the correct payment amount to the client and/or provider resulting in an overpayment. The specialist must initiate recoupment of the overpayment from the provider or client, depending on who was overpaid (dual-party warrant or single-party warrant).

### ***Specialist Errors***

An adult services specialist error may lead to an authorization for more services than the client is entitled to receive. The provider delivers, in good faith, the services for which the client was not entitled to base on the specialist's error. When this occurs, no recoupment is necessary.

**Note:** If overpayment occurs and services were not provided, recoupment must occur.

## **Administrative Hearing Overpayments**

When a client makes a timely request (90 days) for an administrative hearing regarding a negative action, the proposed negative action is delayed pending the outcome of the hearing.

Overpayments result when one of the following occur:

- The hearing request is withdrawn.
- The client fails to appear for the hearing.
- The Department's negative action is upheld.

When any of the above takes place, the specialist must begin the recoupment process for any overpayments that occurred after the effective date of the negative action.

## **RECOUPMENT METHODS**

### **Adult Services Programs**

The Michigan Department of Community Health (MDCH) has the appropriations for the home help and adult community placement programs and is responsible for recoupment of overpayments. The adult services specialist is responsible for notifying the client or provider of the overpayment.

**Note:** The adult services specialist **must not** attempt to collect overpayments by withholding a percentage of the overpayment amount from future authorizations or reducing the full amount from a subsequent month.

When an overpayment occurs in the home help program, the adult services specialist must complete the DHS-566, Recoupment Letter for Home Help.

Recoupment Letter for Home Help (DHS-566)

### **Instructions**

The DHS-566 must:

- Reflect the **time period** in which the overpayment occurred.
- Include the amount that is being recouped

**Note:** The overpayment amount is the net amount (after FICA and union dues deduction), not the cost of care (gross) amount.

- If the overpayment occurred over multiple months, the DHS-566 must reflect the entire amount to be recouped.

**Note:** A separate DHS-566 is not required to reflect an overpayment for multiple months for the same client.

- Two party warrants issued in the home help program are viewed as client payments. Any overpayment involving a two party warrant must be treated as a client overpayment.

**Exception:** If the client was deceased or hospitalized and did not endorse the warrant, recoupment must be from the provider.

- Overpayments must be recouped from the provider for single party warrants.
- When there is a fraud referral, **do not** send a DHS-566 to the client/provider. Send a copy to the MDCH Medicaid Collections unit with a copy of the DHS-834, Fraud Investigation Request.

**Note:** Warrants that have not been cashed are not considered overpayments. These warrants must be returned to Treasury and canceled.

The DHS-566 must be completed in its entirety and signed by the specialist. If information is missing from the letter, the specialist will

receive a memo from the MDCH Medicaid Collections unit requesting the required information.

### **Distribution**

The DHS-566 must be distributed as follows:

- Send two copies to the client/provider. The client/provider keeps a copy for their records and sends the other copy to MDCH along with a check or money order for the overpayment amount.
    - Send one copy to:
      - MDCH Bureau of Finance
- Medicaid Collections Unit  
Lewis Cass Building, 4th Floor  
320 S. Walnut  
Lansing, MI 48913  
**OR**  
Fax to 517-346-9890
- File one copy in the case record.

### ***Recoupment Letter for ACP/HA (DHS-567)***

Follow the same procedures as the DHS-566. (See RFF 567) Recoupment for the adult community placement program is always sent to the adult foster care or homes for aged provider.

ASM 165 5-1-2013,  
Pages 1 – 7.

### **Provider Errors**

Service providers are responsible for correct billing procedures. Providers must only bill for services that have been authorized by the adult services specialist **and** that the provider has already delivered to the client.

**Note:** Applicable for home help agency providers and cases with multiple individual providers where hours may vary from month to month.

Providers are responsible for refunding overpayments resulting from an inaccurate submission of hours. Failure to bill correctly or refund an overpayment is a provider error.

**Example:** Provider error occurs when the provider bills for, and receives payment for services that were not authorized by the specialist or for services which were never provided to the client. ASM 165, 5-1-2013, p 3

ASM 101 discusses Available Services for HHS. This policy specifically states that HHS are not covered when:

Services [are] provided by another resources at the same time (for example, hospitalization,...ASM 105 12-1-2013, Page 5.

In this case, this Administrative Law Judge (ALJ) first wishes to note that there is no issue being reviewed herein regarding Appellant's food stamps. Based on the language of Exhibit A.5, and some of Appellant's testimony, it would appear that Appellant may have been confused at times as to his entitlement to FAP. The sole issue at this administrative hearing has to do with Appellant's HHS case, and not his FAP case. More specifically, the issue herein is the over issuance of the HHS grant with regards to the IADL-meal preparation.

Second, this ALJ notes that there is no allegation against Appellant that he did anything wrong. The Department stipulated at the administrative hearing that the error was 'administrative error', and more specifically, "Specialist Error" as defined in policy. However, policy is quite clear: there can be no payments when a customer is already receiving a service. ASM 105.

In this case, the Department presented evidence that Appellant receives 3 meals per day, 7 days per week as part of his rental contract. Appellant argues that he does not use the meals and prepares his own food.

The Department presented evidence that it verified on 2 separate occasions that Appellant does in fact eat in the building of his residence that provides the meals. (See Exhibit A) Appellant argued that he did not. However, Appellant had no evidence to support his claim. While Appellant may very well have a fridge, crockpot, etc., such does not shift the evidence of the Department that he does not utilize the food service. But even more controlling is the fact that regardless, policy simply does not allow payment where services are otherwise provided. This ALJ must uphold the Department's recoument based on ASM 105.

It is noted, as noted in the Findings of Fact above, that there is no issue regarding fraud, intent, or wilful withholding of information or monies by the provider. The Department is required to recoup where there is an error, with certain exceptions not applicable herein.

**DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly issued a recoupment action against Appellant for the time period from [REDACTED] through [REDACTED].

**IT IS THEREFORE ORDERED** that:

The Department's decision is hereby **AFFIRMED**.

/s/ \_\_\_\_\_  
Janice Spodarek  
Administrative Law Judge  
for Nick Lyon, Director  
Michigan Department of Community Health

JS [REDACTED]

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

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.