

**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. 2014-15413 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 ██████████. Appellant appeared and testified. ██████████, Appellant's parent and provider, appeared as a witness.

██████████, Appeals Review Officer, represented the Department of Community Health (Department). Witnesses on behalf of the Department included: ██████████, Adult Services Worker (ASW), ██████████, Eligibility Specialist for the Department of Human Services (ES), ██████████, General Services Program Manager for the Department of Human Services; ██████████, Financial Manager with the Medicaid Collections Unit.

**ISSUE**

- 1) Did the Department properly close Appellant's ILS/HHS case on ██████████ on the grounds that Appellant no longer had an active MA case?
- 2) Did the Department properly pursue recoupment for the spend-down portion of Appellant's for Home Help Services payments during the time period from ██████████ 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. Appellant has received Home Help Services (HHS) as a Medicaid beneficiary for a number of years. Appellant is a ██████ years old. Appellant's diagnosis is arthrogyposis multiplex congenita. (Exhibit A.11)

2. The Department of Human Services (DHS) classified Appellant as a recipient of HHS under the personal care option.
3. Appellant's MA was closed by the DHS on ██████████ allegedly for Appellant's failure to return a "bank statement." (Exhibit A.19) It is unknown if Appellant filed a hearing request with the DHS. This issue is not reviewed herein as this Administrative Law Judge has no jurisdiction to review an action by the DHS.
4. On ██████████ the ASW issued an "Advance Negative Action Notice" informing Appellant that his HHS will be terminated effective ██████████ as his MA is no longer active.
5. During the time period at issue, Appellant's spend-down varied from approximately \$ ██████████ to \$ ██████████ per month. During this same time period, Appellant was approved for HHS hours between \$ ██████████ and \$ ██████████.
6. On ██████████ the DHS issued a DHS-566 Recoupment letter informing Appellant that his spend-down was not being removed from his provider pay from ██████████ through ██████████, and, that he received an overpayment in the amount of his spend-down for each month during this time period, totaling \$ ██████████. The notice informed Appellant that he had a right to an administrative hearing with the Michigan Department of Community Health.
7. The Department testified that the error was client error.
8. The error in this case was due to administrative error.
9. On ██████████, Appellant's provider filed an administrative hearing request. Appellant's provider is not liable for the debt (Testimony) and has no standing to request a hearing. MAHS incorrectly scheduled a hearing for the provider. At the administrative hearing, Appellant and his provider were present. All parties agreed to have the case renamed in Appellant's name and to proceed with the substantive issues. No objections were made.

### **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.

Eligibility of home help services is found in ASM 105. That policy states in part:

## **Requirements**

Home help eligibility requirements include **all** of the following:

- Medicaid eligibility.
- Certification of medical need.
- Need for service, based on a complete comprehensive assessment indicating a functional limitation of level 3 or greater for at least one activity of daily living (ADL).
- Appropriate Level of Care (LOC) status.

*ASM 105 December 1, 2013  
Page 1 of 4.*

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**

- 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 enti-

bled 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.

Regarding Appellant's request to review of the closure of his MA, this action was taken by the DHS. The hearing request at issue herein was filed with a different Department-DCH. DCH cannot review an action taken by the DHS. Appellant's MA was closed by DHS. Appellant's closure notice would have informed Appellant that he had a right to an administrative hearing with DHS on the MA closure should he dispute the same.

ISSUE 1)

As noted in ASM 105 cited above, among other requirements Appellant must have Medicaid eligibility in order to have eligibility for HHS pursuant to ASM 105. Unrefuted evidence in this case is that Appellant's MA case closed ██████████. Thus, Appellant no longer met the eligibility requirements. Under the authority of ASM 105, the DCH has no authority to continue benefits for the waiver program when a recipient no longer meets the eligibility requirements. On ██████████ Appellant's MA closed and thus, the Department was required to close Appellant's case.

This ALJ finds that the closure of the HHS was correct under ASM 105 and thus, is upheld.

ISSUE 2)

This issue deals with the Department's action to collect \$ ██████████ on the grounds of an overpayment for HHS. The Department policy calls this action a "recoupment." Applicable policy is found in ASM 165 cited above. Of the types of errors found in the overpayment and recoupment process policy ASM 165, only 2 could of those could apply to these facts: 1) client error, and 2) administrative errors. There are two types of administrative errors (see above).

Client and administrative errors are defined in policy above, and specifically state:

### **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.

### **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).

The Department argues that the error herein was client. Testimony in this case was that this was client error as Appellant's worker failed to remove the spend-down amount from the warrants issued to Appellant and his provider each month for almost [REDACTED] years, under the personal care option found in Exhibit II, BEM 545.

However, the Department presented no evidence of any failure by Appellant to give incorrect or incomplete information to the Department. In fact, the Department does not rely on a client to verify social security income; this is done by data matches. Moreover, the calculation of the MA spend-down budget is completed by an employee with the Department; a client does not calculate the spend-down.

This Administrative Law Judge (ALJ) has reviewed the facts. The facts show that it was the failure of the Department herein to remove the spend-down prior to the issuance of the warrant. The error here was a computer or mechanical process administrative error. However, this is not a case where the Department erred in approving Appellant more hours than eligible for (specialist error). If it were, no recoupment would be made. Rather, the facts here is a computer or mechanical process error. Unfortunately for Appellant, the Department is still required to recoup administrative computer or mechanical process errors. Specifically, as noted by the personal care option in BEM 545, Appellant is responsible for the spend-down in order to have MA and eligibility here. Thus, this ALJ finds that the error was a computer or mechanical process error under the administrative error definition. As such, the Department was required to recoup, and thus, this ALJ must uphold the Department's action as it is in compliance with policy and procedure.

**DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides:

ISSUE 1) the Department correctly closed Appellant's HHS case as Appellant no longer had an active MA case, and

ISSUE 2) the Department properly issued a recoupment against the Appellant in the amount of \$ [REDACTED] for the time period from [REDACTED] to [REDACTED].

**IT IS THEREFORE ORDERED** that:


The Department's decision on both issues was correct and is hereby **AFFIRMED**.

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Janice Spodarek  
Administrative Law Judge  
for James K. Haveman, Director  
Michigan Department of Community Health

[REDACTED]  
Date Signed: March 25, 2014

Date Mailed: March 26, 2014

  
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cc:



**\*\*\* 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.