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Docket No. 2014-35817 HHR
Decision and Order

4. At all times, the payments were made directly to Appellant through a single party warrant. (Respondent's Exhibit A, page 12; Testimony of ██████; Testimony of ██████; Testimony of ASW ██████; Testimony of ██████)
5. On ██████, ASW ██████ learned that, despite the fact that the MB was receiving HHS, the MB had also been enrolled as a HHS provider since ██████ (Respondent's Exhibit A, page 10; Testimony of ASW ██████).
6. That same day, ASW ██████ terminated the MB's HHS, effective ██████, and informed Appellant of the action he had taken. (Respondent's Exhibit A, page 10; Testimony of ASW ██████)
7. On ██████, ASW ██████ sent Appellant a letter informing it of an overpayment of ██████ in MB's case for the time period of ██████ through ██████. (Respondent's Exhibit A, pages 5-6).
8. The reason for the overpayment given in the notice was: "Client was working as a provider for her sister, when she was receiving services herself." (Respondent's Exhibit A, page 5).
9. The letter also requested that Appellant submit a personal check or money order as repayment. (Respondent's Exhibit A, pages 5-6).
10. On ██████ sent Appellant an Initial Collection Notification, indicating that Appellant owed the Adult Services Program ██████ and requesting payment of that debt. (Respondent's Exhibit A, page 7).
11. That notice also informed Appellant of its right to a hearing if it wished to contest the debt. (Respondent's Exhibit A, page 7).
12. The Initial Collection Notification further stated that, if the Department did not hear from Appellant by ██████, it would implement further collection action, including a possible withholding of future payments. (Respondent's Exhibit A, page 7).
13. On ██████, the Michigan Administrative Hearing System (MAHS) received the request for hearing filed by Appellant in this matter. (Respondent's Exhibit A, page 4).
14. However, that request for hearing was mistakenly docketed as an appeal filed by the MB and was scheduled as a case with the MB as the appellant.

15. Due to the docketing mistake, the Department did not received notice that Appellant had timely filed an appeal contesting the debt and a collection action was implemented.
16. Specifically, the Department withheld ██████████ from a payment issued to Appellant. (Testimony of ██████████).
17. After the docketing mistake was discovered, the identity of the appellant was corrected and the matter rescheduled with the proper parties.
18. On ██████████ an administrative hearing was held in this matter.

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 165 (5-1-2013) (hereinafter "ASM 165") addresses the overpayment and recoupment process for HHS:

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.

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.

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 over-payment. 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 based 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

- 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.

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Here, pursuant to the above polices, the Department is attempting to recoup an overpayment from Appellant. Specifically, it asserts that the MB improperly received HHS between ██████████ and ██████████, despite the fact that she herself was a HHS provider during that time. The Department also asserts that payments were made directly to Appellant for that time period in the total amount of ██████████

In response, Appellant's witnesses do not dispute the amount paid or the fact that the MB was improperly authorized HHS. Instead, they assert that any overpayment was solely the fault of the MB, who failed to accurately report all information, and the Department, who approved the MB for HHS and as a provider. Appellant's witnesses further testified that Appellant provided all the authorized services as approved and that it has no control over what the MB did when it was not there or what she reported to the Department.

It does appear that the overpayment in this case was the fault of the MB, as she either reported inaccurate or incomplete information or failed to report information needed to make an accurate assessment of her need for services.¹ Moreover, in such situations, the above policy generally appears to provide that the Department seek recoupment from the client.

However, the above policy also specifically provides that "Overpayments must be recouped from the provider for single party warrants." ASM 165, page 5 of 7. Here, an overpayment was made and, while the MB was at fault, she did not receive any payments. Instead, all payments were made directly to the Appellant/Provider through a single party warrant. Consequently, given the clear and specific policy regarding recoupment and single party warrants, the Department must seek recoupment from the Appellant/Provider.

The Department is bound by the federal regulation and state policy requirement to recoup overpayments, even if the error was not on the part of a HHS provider. The Administrative Law Judge also does not have equitable jurisdiction to override federal regulation or state policy.

Accordingly, based on the record in this case, an overpayment was made to Appellant in the amount of ██████████ from ██████████ through ██████████ and the Department properly sought recoupment from the Appellant for that overpayment.

¹ Given that this case appears to involve willful client overpayment in an amount over ██████████, the ASW should have referred the case to the Office of the Inspector General for fraud investigation. See ASM 165, pages 1-2 of 7. ASW ██████████ did not make such a referral in this case and he did not explain why he did not do so.

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DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, finds that the Department properly pursued recoupment against the Appellant.

IT IS THEREFORE ORDERED THAT:

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

Steven Kibit

Steven Kibit
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Community Health

Date Signed: [REDACTED]

Date Mailed: [REDACTED]

SK/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.