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

IN THE MATTER OF:

Docket No. 15-001882 HHR

[redacted],

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 telephone conference hearing was held on [redacted]. Appellant appeared and testified.

[redacted], Appeals Review Officer, represented the Department of Community Health (Department). On behalf of the Department, [redacted], Adult Services Supervisor, and [redacted], Adult Services Worker (ASW), appeared as witnesses on behalf of the Department.

ISSUE

Did the Department properly pursue recoupment against the provider for the time period of [redacted] through [redacted] during which time the HHS client was hospitalized?

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 provider for a recipient of HHS with the Michigan Department of Human Services. Appellant is an enrolled provider.

2. On [redacted] Appellant's client, her mother, was admitted into a hospital and did not return home. (Exhibit A.2).

3. During the time of hospitalization, Appellant did the beneficiary's laundry, brought her meals, assisted her with doctor appointments, and went to 'rehab' with her mother. (Testimony).

4. On [redacted] the Department sent a home visit letter to the beneficiary, following which the Appellant notified the department that the beneficiary

was hospitalized. (Exhibit A.5; Testimony).

5. On [redacted] the Department of Human Services (DHS) sent the provider a recoupment notice indicating that payments during the hospitalization are being recouped for $[redacted] for the following pay periods ending [redacted]; [redacted]; [redacted]; and [redacted]. The total recoupment was for $[redacted]. (Exhibit A.5-10).

6. On [redacted] Appellant filed a hearing request. (Exhibit A.4).

7. 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 enti-

tled 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

In the ASM 135 Home Help Provider item, policy is explicit regarding when payments CANNOT be made when a client is hospitalized:

Home Help services CANNOT be paid the day a client is admitted into the hospital but can be paid the day of discharge. ASM 135, 12-1-2014, p 3.

Here, the Department did not have any evidence of having secured a DHS-4676. In fact, testimony in this case was that the form did not exist when the case was open 10 years ago, and thus, it is unlikely that the form was signed by Appellant. At the same time, at each review, the Department is required to inform providers of the necessity to inform the Department within 10 days if the Appellant is hospitalized. ASM 135.

The issue here is the Department's whether federal and state law requires recoupment where the Appellant did not intentionally fail to inform, and, when the Appellant in fact provided services to the beneficiary despite the beneficiary's hospitalization. The Department argues yes. Appellant argues no on the grounds that she was not aware of the policy, and, provided HHS.

Under ASM 165-Overpayment and Recoupment Process-a distinction is made between willful client overpayment and Non-Willful Client Overpayment. Generally, if the overpayment is willful, the Department is required to make a fraud referral to the inspector general and/or county prosecutor. Policy states that there is no willful overpayment where the "…client has a justifiable explanation for not giving correct or full information." ASM 165, page 2 of 7; Exhibit A.23).

Here, Appellant was a credible witness. There is no allegation here that Appellant willfully failed to disclose. Thus, there is no fraud issue. However, policy further states that "All instances of non-willful client error must be recouped." ASM 165, page 3 of 7; Exhibit A.23.

As noted above, the HHS program is a Medicaid program for services provided in the home. There is no eligibility, and no payment that came be made for any services provided outside the home.

Here, Appellant credibly testified that she provided services for her mother when and while her mother was hospitalized. However, providing services for her mother while her mother was in the hospital is outside the purview of federal and state law authorizing services for the HHS program. Thus, despite Appellant's credibility, federal and state law requires recoupment even when services are provided. Thus, even if Appellant could make a case of Department error, federal and state law requires the collection of the monies considered overpayments as they fall outside the eligibility parameters of the HHS program. Failing to do so could subject the State of Michigan to significant financial penalties if an audit were conducted.

Policy is quite clear: there can be no payments when a customer is hospitalized. ASM 165.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED that:

The Department's decision is hereby AFFIRMED.

Janice Spodarek
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Community Health

Date Signed: [redacted]

Date Mailed: [redacted]

cc: [redacted]

JS[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.