

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES**

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IN THE MATTER OF:

██████████,

Appellant.

_____ /

Docket # 15-005455 HHS

Case No: ██████████

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 ██████████. Appellant appeared and testified. ██████████ appeared as a witness on behalf of Appellant.

██████████, Appeals Review Officer, represented the then Department of Human Services (Department). The Adult Services Supervisor, (ASS), and the Adult Services Worker, (ASW) who have personal knowledge of this case did not appear at the administrative hearing for testimony or cross-examination. ██████████, Adult Services Supervisor who did not have personal knowledge of this case appeared as a witness on behalf of the Department.

ISSUE

Did the Department properly pursue recoupment against Appellant for payments made for Home Help Services (HHS) for the period between ██████████ through ██████████ for the reason that the provider log was not received?

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 ██████ year old female beneficiary of the SSI and Medicaid programs. Between the period of ██████████ and 1 ██████████, Appellant had an open HHS case for a grant of ██████████. (Exhibit A; Testimony).
2. On ██████████ the DHS issued a letter to Appellant indicating that that it had determined that an overpayment occurred on her HHS case for the time between October and December 2014 due to "provider log not received for 10,11,12". The notice indicated a total overpayment of ██████████. (Exhibit A.4-5).
3. On ██████████ Appellant filed a hearing request with the Michigan Administrative Hearing System (MAHS) stating "she stole from me, she did not work for me." (Exhibit A.4-5).

4. The individuals who have personal knowledge of this case-Appellant's son's ASW (and ASS) were not at the administrative hearing and not available for testimony and/or cross-examination.
5. Copies of the alleged cashed warrants were not submitted as evidence.

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.

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.

ASM 165, pages 1-5 of 7

Here, as noted in the Findings of Fact, the individuals who have personal knowledge of this case did not appear at the administrative hearing—neither the ASW, nor the ASS of that ASW. The ASS who did appear was a reluctant witness.

Appellant argued that the services were never rendered, that she was bed-ridden, and even crawled on her hands and knees at times. Appellant further alleged that during this time she did see the provider, and went for 9 days without food.

The Department responded by indicating that the warrants were made out to both the beneficiary and the provider. Appellant alleges that she never signed any of these warrants, and that services were never rendered. Appellant was a credible witness. The Department did not submit copies of the warrants to show signature(s). Moreover, the evidence submitted by the Department was patently ambiguous based on the testimony with regards to Exhibits A.15 and A.16.

After a careful review of the credible and substantial evidence of record, this ALJ finds that the Department's proposed recoupment against Appellant is not supported by the evidence for the reasons set forth below.

Under the above cited policy, Appellant was unable to question and cross-examine the worker in this case. The record could not be fully developed as to what kind of error occurred. In fact, if the error was a specialist error, there is no recoupment. Based on Appellant's credible testimony, the error is provider error. Policy states that it is the provider who is responsible for repayment when it is provider error. ASM 165.

Appellant was not afforded her fair hearing rights to cross-examine the individuals who have personal knowledge of this case—Appellant's current ASW (and ASS). Appellant was not given an opportunity to question and/or cross-examine that individual at the administrative hearing. Pursuant to 42 CFR 431.220 Appellant's fair hearing rights include the right to:

...(e) question or refute any testimony evidence, including the opportunity to confront and cross-examine adverse witnesses. 42 CFR 431.242(e).

Moreover, under the Department of Licensing and Regulatory Affairs, MAHS, Administrative Hearing Rules, under Part 1: General: MAHS Rules Rule 106 requires the ALJ to examine witnesses necessary to complete a record. Rule 106(1)(l), and under R 792.10128, Rule 128(d) opposing parties shall be entitled to cross-examine witnesses. The inability to examine all witnesses also violates the due process rights under the Rights of parties section R 792.11008 wherein it states that a claimant has

the right to “question or refute any testimony or evidence, including the opportunity to confront and cross-examine adverse witnesses.” Rule 792.11008(i).

In addition, Department of Licensing and Regulatory Affairs, MAHS, Administrative Rules, and as applicable the provisions of Chapter 4 of the Michigan Administrative Procedures Action of 1969, 1969 PA 306, MCL 24.271 to 24.287 apply. MAPA specifically indicates under 24.272 that “A party may cross-examine a witness, including the author of a document prepared by, on behalf of, or for the use of the agency and offered into evidence.” MAPA, 24.272(4).
BAM 600 also states:

Both the local office and the client or AHR must have adequate opportunity to present the case, bring witnesses, establish all pertinent facts, argue the case, refute any evidence, cross-examine adverse witnesses, and cross-examine the author of a document offered in evidence. P 36.

Here, Appellant questioned the credibility of the Department’s evidence, Exhibit A. The Department is reversed.

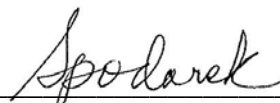
DECISION AND ORDER

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

IT IS THEREFORE ORDERED THAT:

The Department’s decision is **REVERSED**.

The Department is ordered to remove the recoupment action of \$467.67 against Appellant for the period from 10/1/14 through 12/31/14 from its collections data base.



Janice Spodarek
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Health and Human
Service

Date Signed: ██████████

Date Mailed: ██████████

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***** 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.