

**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. 15-001133 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 Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. Appellant appeared on her own behalf. ██████████ Appeals Review Officer, represented the Respondent Department of Community Health (DCH). ██████████, Adult Services Worker, appeared as witnesses for the Department.

ISSUE

Did the Department properly pursue recoupment against the Appellant for an overpayment of Home Help Services (HHS) in the amount of ██████████

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 Medicaid beneficiary, born ██████████, who has been receiving HHS since ██████████. (State's Exhibit 10).
2. Appellant has been diagnosed with meningioma, breast cancer, hypertension, transient ischemic attack and coronary artery disease. (State's Exhibit 11).
3. Appellant was receiving HHS for assistance with bathing, dressing, mobility, housework, laundry, shopping and meal preparation. (State's Exhibit 12)
4. On ██████████, payment in the amount of ██████████ was made to appellant's provider for HHS rendered to Appellant from ██████████ to ██████████ (Appellant's Exhibit 2)

5. On [REDACTED], the worker testified that she returned provider logs to Appellant along with a recoupment letter because the provider logs were incompletely filled out.
6. On [REDACTED], a home call was conducted. At the home call the worker discussed provider logs, stating that Appellant was minimally filling them out, and that the worker would only pay for what is shown on the provider log is being done. (State's Exhibit 13).
7. On [REDACTED], Appellant notified the worker that she had a new provider through [REDACTED]. (State's Exhibit 13)
8. On [REDACTED], Adult Services Worker from [REDACTED] County Department of Human Services, sent Appellant a DHS-566 notice informing her that an overpayment in the amount of [REDACTED] would be recouped as HHS were not provided for the month of [REDACTED] (State's Exhibit 2)
9. On [REDACTED], Manager with the Medicaid Collections Unit, sent appellant an Initial Collection Notice stating that Appellant owed the Department [REDACTED] (State's Exhibit 5)
10. On [REDACTED], Appellant's hearing request was received by the Michigan Administrative Hearing System. (State's Exhibit 4).
11. On [REDACTED], the hearing was held.
12. At the hearing, Appellant waived the timeliness standard and requested to submit a letter from her provider indicating that she did provide services for Appellant during the month of [REDACTED] y [REDACTED]
13. The record was left open until [REDACTED].
14. On [REDACTED], MAHs received a FAX copy of a letter signed by [REDACTED] (Appellant's HHS provider until [REDACTED] which states: "This letter is to verify that I worked as home help for [REDACTED] from [REDACTED] to [REDACTED] t with pay. [REDACTED] stated that I did not work in [REDACTED] here is the stub to prove it. I found her rude and smart mouth to me and [REDACTED]." (Appellant's Exhibits 1-2)
15. On [REDACTED], the record closed.

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 health professional and may be provided by individuals or by private or public agencies.

Adult Services Manual (ASM) 165, 05-01-2013, 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

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.

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 05-01-2013,
Pages 1-3 of 6.

Appellant testified on the record that her caregiver provided HHS to her until ██████████. At that time she began receiving HHS from a different provider. Appellant testified that the Adult Services worker was rude and told her that the forms were not being filled out correctly. When Appellant tried to explain to the worker that the HHS provider had not changed how she was filling out the logs and that she had filled them out similarly in when she lived in ██████████ and the worker told Appellant that she is no longer in ██████████. Appellant stated that she was confused and did not know what the problem was with the logs. Appellant gave the provider logs to the provider so she could fill them out. The provider filled the logs out and sent them to the worker. Appellant testified that, at all times relevant to this case, she has needed the HHS on a continual basis and that she cannot perform her Activities of Daily Living (ADLs) of Incidental Activities of Daily Living (IADLs) without the assistance of HHS providers.

The Worker testified that she did receive the HHS logs. The worker indicated that she sent the logs back to Appellant to be filled out correctly. She was never rude to the Appellant at the home visit and never told Appellant that she was no longer in ██████████. The worker assessed Appellant as continuing to need the same HHS that she needed since ██████████ and continued her eligibility for the services with a different provider.

This Administrative Law Judge finds that the logs in question are not a part of the record. The evidence does not indicate what was wrong with the logs or exactly why the Worker determined that the logs were not properly completed. The Appellant's testimony that the logs had been filled out and returned to the worker is credible. The worker conceded on

the record that she did receive the relevant logs initially and sent them back to Appellant. Thus, there was evidence on the record that Appellant's provider did perform HHS services for Appellant from ██████████ through ██████████ and that the provider logs were appropriately sent to the Worker. The recoupment notice information in the file indicated that the reason for the overpayment notice was "Home Help Services were not provided". (State's Exhibit 7) However, credible evidence on the record indicates that the services were provided. The record does not establish that the provider was paid for any services that were not approved by the Services Worker or by the department. Overpayment has not been established beyond a preponderance of the evidence on the record.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department has not properly pursued recoupment against Appellant under the circumstances.

IT IS THEREFORE ORDERED that:

The Department's decision in seeking recoupment is **REVERSED**. The department shall not recoup ██████████ from Appellant or her provider. The Department shall not implement further collection action in this matter.

Landis Y. Lain

Landis Y. Lain
Administrative Law Judge
for Nick Lyon, Director
Michigan Department of Community Health

Date Signed: ██████████
Date Mailed: ██████████

LYL/db

cc: ██████████
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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. 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.