

**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:

██████████,

Appellant

_____ /

Docket No. 15-013987 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 hearing was commenced on ██████████.

Appellant appeared and testified. ██████████ Appeals Review Officer, represented the Department. ██████████, Adult Services Worker (ASW), and ██████████ Adult Services Supervisor (ASS) sitting in for ██████████, appeared as witnesses for the Department.

At the ██████████ hearing, the Department could not locate Appellant's file, and could not meet its burden of going forward. The record was insufficient for the undersigned Administrative Law Judge to make a ruling. The parties agreed to a continuance to give the Department an opportunity to locate Appellant's file, and to attempt to give the Department time to resolve the status of overpayments the Department stipulated it made to Professional Home Care instead of Appellant's provider.

On ██████████ a continuance was held. Appellant appeared and testified. ██████████, Appeals Review Officer, represented the Department. ██████████, Adult Services Worker (ASW), and ██████████ Adult Services Supervisor (ASS) who has personal knowledge of this case, appeared as witnesses for the Department. At the time of the continuance, the Department appeared without Appellant's file, and had not resolved the status of the overpayments.

ISSUE

Did the Department properly issue HHS payments for ██████████?

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 ██████████ male, who is a beneficiary of Medicaid program.

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2. Appellant has had an open and ongoing HHS case since at least [REDACTED] (Exhibit A.12).
3. On [REDACTED] Appellant changed his provider to [REDACTED] provided care to Appellant in [REDACTED]. (Testimony of Appellant).
4. The Department stipulated that Sykes provided HHS services to Appellant in [REDACTED] but was not paid. The Department has no evidence that Professional Home Care was authorized by Appellant, or, that Professional Home Care submitted any type of log or invoices for payment on behalf of Appellant. The Department stated that it incorrectly Professional Home Care for HHS on behalf of Appellant for [REDACTED] [REDACTED].
5. Appellant never authorized Professional Home Care to provide services.
6. On [REDACTED] the ASW entered an overpayment for Professional Home Care in the amount of [REDACTED] and on [REDACTED] in the amount of [REDACTED] (Exhibit A.5). Department Testimony was that Professional Home Care was overpaid [REDACTED] for [REDACTED] and [REDACTED] again on behalf of services not rendered in Appellant's case for [REDACTED]. (Exhibit A.12).
7. On [REDACTED] the ASW printed a DHS-566 for recoupment against Professional Home Care Services by sending an electronic copy to the MDCH-Medicaid Collections unit for the reason hat home help services were not provided by the HHS agency. (Exhibit A.9-10). The department failed to act on the recoupment. (ASW Testimony).
8. On [REDACTED] the ASW contacted the Professional Home Care agency and was told that they would return the funds if she contacted "Tiara" in the "funding" office. The ASW subsequently contacted the agency and was told that no one by the name of Tiara works for Professional Home Care. (Testimony).
9. The ASW has not made a fraud referral.
10. Appellant's provider did submit logs. (Appellant Testimony).
11. At the continuance, the Department represented that an exception has been instituted to issue payments. Upon inquiry, the ASW testified that she issued an e-mail to her supervisor, but could not recall when, and then remembered that it was perhaps just that morning, the same day as the continuance. The ASS as the administrative had no recall or evidence of having received an e-mail that morning from the ASW.
12. The Department stipulated that the amount owing is [REDACTED] for each month, totaling [REDACTED] for the 2 months disputed. (Testimony).

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13. Appellant has repeatedly asked for payment without resolution.
14. On ██████████ Appellant filed a hearing request with the Michigan Administrative Hearing System.

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.

The Adult Services Manual (ASM) policy regarding warrants and payments is found primary in ASM 140-Payment Authorizations, and ASM 160-Warrants. Other applicable authority and policy is found in the Adult Services Manual policy, including 105, 115, 135, 136. In addition, the Department has recoupment procedures in a number of the Bridges manual items, in BEM and BAM.

Here, Appellant requests that the payment for the services provided in ██████████ ██████████ be paid. The Department agrees with Appellant that the money is owed, and that Appellant's provider provided the services. However, the Department argues that it does not have to issue payments until it receives the money back from the agency.

In support of its argument, the Department contends that Appellant verbally told the Department that the agency was going to be his provider. Appellant disputes this, arguing that this is not true. The Department had no credible evidence, documentary or otherwise, to offer to support its burden of going forward. The Department had no logs, no invoices, no written authorization, and in fact, could not locate Appellant's file at the initial hearing, and after granting the Respondent a continuance to search for the file. The Department's actions in this case were not in accordance with recoupment procedures under federal and state requirements, and Department policy.

Moreover, the Department's testimony that an exception has been instituted was not credible. The Department had no evidence that 'an e-mail had been sent to the ASW's supervisor. Moreover, the supervisor was present at the administrative hearing, testified that she had no evidence nor any recall of having received any such e-mail. While an Appellant does have the burden of proof at an administrative hearing, the Department

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has the burden of going forward in such a manner as to adequately explain the action, and, cite the authority relied upon in taking the action. The Department could not do so in this case. In addition, there is no evidence presented to show that the Department is working toward issuing the HHS payments in Appellant's case that the Department agrees are owed.

The Department is reversed.

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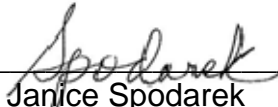
The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department failed to properly issue payments for HHS services owed on Appellant's HHS case for ██████████ in the amount of ██████████ and ██████████ in the amount of ██████████, totaling ██████████ for both months.

IT IS THEREFORE ORDERED that:

The Department's actions are **REVERSED**.

The Department is ordered to issue the payments owed.

It is so ORDERED.



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

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cc: ██████████
██████████
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██████████

Date Mailed: ██████████

***** 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.