

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. 15-016256 HHR
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 Appellant's request for a hearing.

After due notice, a hearing was held on ██████████. Appellant appeared on her own behalf. ██████████, Appeals Review Officer, appeared on behalf of the Respondent Department of Health and Human Services (Department). ██████████, Adult Services Specialist; ██████████, Adult Services Supervisor; and ██████████, Financial Manager, Medicaid Collections Unit, appeared as witnesses for the Department.

ISSUE

Whether the Department has established that Appellant received an over-issuance of Home Help Services (HHS) which must be recouped 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, who received HHS services.
2. On July 31, 2014 the Department caseworker met with Appellant, her husband and their new provider, ██████████ at Appellant's home for a redetermination assessment. State's Exhibit A page 21
3. On March 26, 2015, a redetermination was conducted with Appellant and the provider at Appellant's home. The case was modified and it was determined that bathing and grooming would be half pay because the client was able to complete these tasks with minimum assistance. State's Exhibit A page 21
4. On May 31, 2015, the Bridges system shut down HHS payments and transferred to CHAMPS. HHS payments were suspended.

5. On June 8, 2015, the provider contacted the caseworker to ask why the case was reduced. The provider then stated that the Appellant does not give him the entire check. He stated that the Appellant refused to let him do the work and when the check comes, he is only given \$██████████ per month. The provider did not allow him to complete the provider logs. State's Exhibit A page 19
6. On June 10, 2015, the caseworker contacted the Appellant who denied the providers allegations. The caseworker noted that the payments would be put into the provider's name only. State's Exhibit A page 19
7. On July 13, 2015, the provider contacted the caseworker asking why no payment had been made. He reported that he has attempted to contact Appellant but she refused to answer calls and he never performed any services for Appellant. State's Exhibit a page 18
8. On July 13, 2015, a recoupment was completed by the Department caseworker.
9. On July 13, 2015, a Notice of overpayment and recoupment letter was sent to Appellant. State's Exhibit A page 7
10. On August 26, 2015, the Department sent Appellant a Notice of Recoupment letter.
11. On September 3, 2015, a six month review was conducted with Appellant and her husband. Appellant indicated that she and the provider signed all of the provider logs and checks and the provider was given all the money. The provider accused Appellant of not paying him. At that time Appellant expressed that she would like to have a new provider and that no one was assisting her in the home. State's Exhibit A page 17
12. On September 15, 2015, Appellant filed a request for a hearing with the Michigan Department of Health And Humans Services Administrative Tribunal to contest the Negative Action.

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 ██████████. She does not understand why he would say that he has not provided services. The provider performs HHS for his parents in an apartment in the same building. Then the provider would come to Appellant's apartment and perform the HHS services for her. She filled out all of the logs and both she and the provider signed the logs and returned them to the Adult Services Worker. Once the payment warrants were received, Appellant testified that she and her provider went across the street to the liquor store and both signed the back of the payment warrant. The person who worked in the store gave the money to the provider and returned her identification to her.

Evidence on the record indicates that Appellant's testimony is consistent with the copies of the payment warrants. The backs of the warrants are signed by the provider and Appellant. The warrants were then deposited at ██████████ into an account for ██████████. State's Exhibit A pages 9-16

The Department caseworker testified that there were no payments made after ██████████ because there was a BRIDGES computer conversion to CHAMPS. The provider called her on ██████████ to state that he was not receiving his payments and had performed no services for Appellant. He indicated that Appellant was only giving him \$██████████ per month out of the payment. The Adult Services Worker indicated that the provider's Food Assistance Program benefits were reduced because of his receipt of earned income from HHS. The HHS provider was not available to testify at the hearing. The Department was unable to reach him by telephone. He was not available for cross examination at the hearing and any statements he made to the caseworker are thus, hearsay. It is impossible to determine the credibility of the HHS provider in this case.

There is absolutely no reliable evidence on the record that the provider failed to receive payment or that he failed to perform HHS services that he would have signed chore performance logs for.

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 Appellant's testimony that the provider did provide HHS and was paid correctly for those services is credible and consistent. 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 January 1 through April 30, 2015 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

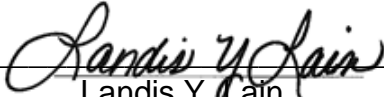
notice was "Home Help Services were not provided". (State's Exhibit A page 7) However, credible evidence on the record indicates that the services were provided. The record does not establish that the provider was paid for any services that were not approved by the Services Worker or by the department. 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 \$ [REDACTED] from Appellant. The Department shall not implement further collection action in this matter.



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

cc:

[REDACTED]

LYL/ [REDACTED]

Date Signed: November 19, 2015
Date Mailed: November 20, 2015

***** 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.