

**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. 15-016849 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, represented the Respondent Department of Health and Human Services (Department). ██████████, Adult Services Worker appeared as a witness 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. Appellant was hospitalized from ██████████ through ██████████.
3. On ██████████, the provider logs were received by the Department for services performed in ██████████.
4. On ██████████, the Department issued payment in a two party check to Appellant and her provider and sent it to Appellant's address.
5. On ██████████, the provider stopped providing services to Appellant.
6. On ██████████ and ██████████, the Department sent Appellant a Notice of Recoupment letter for over-issuance of HHS payments from ██████████ through ██████████.

7. On [REDACTED], Appellant filed a request for a hearing with the Michigan Administrative Hearing System 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 that she was hospitalized from ██████████ through ██████████. She received the check for HHS and returned it to the Department because she knew that the hours were inaccurate. She spoke to the caseworker, her home help contact, regarding the matter and was advised that the department had re-issued the check and sent it to ██████████ (the provider) directly. The provider received the check and cashed it. The provider forged Appellant's signature because it was a two party check. Appellant also testified that the check was taken from her mailbox and her name was forged. When she received the check in ██████████, Appellant thought it was for June because she had not received a ██████████ check. Appellant sent it back to the Department because she knew that the provider had not worked for most of ██████████.

The evidence on the record indicates that Appellant was also hospitalized from ██████████ through ██████████. Appellant received a check for the dates of ██████████ - ██████████ and ██████████ - ██████████, which she sent back to the Department. The check was reissued by the Department directly to the provider because the Department received completed provider logs.

The Department caseworker testified that Appellant did not notify the Department within ten days that she had been hospitalized in ██████████. The caseworker testified that the logs were sent in completed and signed by both parties so the ██████████ check went out. Appellant did not contact the caseworker until ██████████ to tell the caseworker that the provider was no longer providing services. Because the worker learned that the

client had been hospitalized after the payment warrant for the June services and had already been sent, the worker informed Appellant that she would need to seek recoupment for the overpayment made to Appellant/provider. Appellant testified credibly that she never signed the logs as she does not have the use of her right arm and did not sign the provider log for ██████ because she knew that she had been in the hospital for most of the month.

This Administrative Law Judge finds that the Department is correct when it argues that two party checks are viewed as client payments. Any overpayment involving a two party warrant must be treated as a client overpayment. (ASM 165, page 5) It does not necessarily become a client error. However, Appellant testified that she was very ill and disabled, which is why she needed HHS services in the first place. Once she figured out that the provider had sent in incorrect logs she contacted her caseworker and sent the warrant for HHS services back to the Department. She notified the caseworker that the provider had forged the signature on the back of the check and cashed it.

The provider received the check for services which she failed to provide and cashed the check, knowing that she did not perform HHS services from ██████ through ██████ ██████. Thus, this is **PROVIDER** error rather than client error. In fact, caseworker notes indicate clearly that the Department had actual timely notice that Appellant had been in the hospital in ██████. Caseworker notes indicate that on ██████ at ██████ the caseworker received a call from ██████, a nurse at the hospital. The Nurse stated that Appellant would be going home, was in need of wound care and the hospital would have home care set up for this. Appellant was concerned about losing HHS and the caseworker explained that it was fine as long as there were no duplicative services. State's Exhibit A page 12. The caseworker still issued the ██████ check to the provider and the Appellant, on ██████, after she had notice that Appellant had been in the hospital.

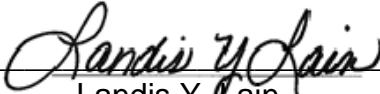
The record does not establish by the necessary competent, substantial and material evidence on the record that there is client error in the case of this overpayment. The record clearly establishes that there is provider error. The Department cannot recoup overpayments from the client in a case of provider error. The Department must recoup payment from the provider for inaccurately representing what HHS services she provided to the client in ██████. The Department's request for recoupment must be denied under the circumstances.

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 has not established that the overpayment of HHS benefits was as a result of client error. The department shall not recoup \$██████████ from Appellant. The Department shall not implement further collection action against Appellant in this matter.



Landis Y. Lain

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

cc: Renae Kincaid
Dawn Pline
Michael Daeschlein
Michelle McGuire

LYL/██████

Date Signed: ██████████

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. 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.