

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

P.O. Box 30763, Lansing, MI 48909
(517) 373-0722; Fax: (517) 373-4147

IN THE MATTER OF:

MAHS Docket No. 15-017581 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 telephone hearing was held on ██████████. Appellant appeared and testified on his own behalf. ██████████ Appeals Review Officer, represented the Respondent Department of Health and Human Services (Department or DHHS). ██████████, Adult Services Worker; ██████████, Adult Services Supervisor; and ██████████, Financial Manager; testified 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 ██████████ year-old Medicaid beneficiary who had been approved for ██████████ per month of HHS. (Exhibit A, pages 17, 25).
2. Beginning ██████████ Appellant's home help provider was ██████████ ██████████. (Exhibit A, page 27).
3. On ██████████, the ASW conducted a home visit with Appellant, Appellant's wife, and the home help provider. (Exhibit A, page 23).
4. During that home visit, no changes were reported and it was determined that services and payments would continue. (Exhibit A, page 23).

5. On ██████████, the home help provider telephoned the ASW to ask about his payments and, during that conversation, the home help provider reported that Appellant does not allow him to do any work or complete any provider logs, and that Appellant only pays the provider ██████ out of the monthly check. (Exhibit A, page 23; Testimony of ASW).
6. The home help provider also acknowledged that he had lied to the ASW in the past about providing services. (Testimony of ASW).
7. On ██████████, the ASW telephoned Appellant about the provider's statements and spoke with Appellant's wife, who stated that she was confused about the provider's statements as he does provide the approved assistance. (Exhibit A, page 22; Testimony of ASW).
8. The ASW then indicated that a meeting needed to be conducted with the provider regarding services and payments, and Appellant's wife stated that they were willing to meet. (Exhibit A, page 22).
9. On ██████████, the home help provider telephoned the ASW and again reported that he had not provided any services since be assigned to the case and that Appellant was refusing to take the provider's calls. (Exhibit A, pages 21-22).
10. The ASW then decided to suspend Appellant's services and seek recoupment for payments made this year, but not to refer the case to the Office of Inspector General (OIG) for a fraud investigation. (Exhibit A, pages 21-22; Testimony of ASW).
11. On ██████████, the ASW also sent Appellant a letter informing Appellant that an overpayment of ██████████ had occurred for the time period of ██████████ to ██████████ as the home help provider had admitted that no HHS were provided during that period and that Appellant would not let him provide services. (Exhibit A, pages 6-7).
12. On ██████ ██████ ██████ ██████ ██████, a financial manager in the Department's Medicaid Collections Unit, sent Appellant an Initial Collection Notification, indicating that Appellant owed the Adult Services Program ██████████ and requesting payment of that debt. (Exhibit A, page 8).
13. That notice also informed Appellant of his right to a hearing if he wished to contest the debt. (Exhibit A, page 8).

14. The Initial Collection Notification further stated that, if the Department did not hear from Appellant by ██████████, it would implement further collection action. (Exhibit A, page 8).
15. On ██████████, the ASW conducted a ██████ month review in Appellant's home with Appellant and Appellant's wife. (Exhibit A, page 21).
16. During that review, Appellant reported that his provider had not been there for a month and that he was very upset when the provider accused his wife of not paying him. (Exhibit A, page 21).
17. Appellant's wife also reported that she will have an old provider become the home help provider again and that no one had been assisting them since ██████████ stopped providing services. (Exhibit A, page 21).
18. On ██████████, the Michigan Administrative Hearing System (MAHS) received the request for hearing filed in this matter by Appellant regarding the Department's decision to recoup payments. (Exhibit A, pages 4-5).
19. Appellant subsequently enrolled a new home help provider and his case is active, but all warrants are issued in the new provider's name alone. (Testimony of ASW).

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 recoupment process of payments 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.

* * *

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)

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

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, the Department is seeking to recoup payments from Appellant on the basis that an overpayment occurred because no HHS were provided between ██████████ and ██████████. In support of that decision, the ASW testified that she believed the home help provider when he told her that Appellant was not letting him provide services and was keeping the money. In response, Appellant testified that the services were provided by the home help provider as authorized and that the provider received full payment.

Given the record in this case, the undersigned Administrative Law Judge finds that the Department improperly sought recoupment from Appellant. The Department's decision is supported solely by hearsay, and such unsworn statements made by a home help provider who did not appear or testify at the hearing are insufficient on their own to justify recoupment, especially where the Department's response to those statements was so lacking. Appellant and his wife denied the provider's claims and agreed to meet with the ASW and provider to follow-up, but no meeting was ever held. The ASW also failed to conduct any other investigation on her own regarding the allegations and, even though the provider's claims would demonstrate fraud/willful overpayment in an amount of ████████, she never referred the case to the OIG for an investigation as required by policy. Instead, she simply accepted the unsupported claims and instituted a recoupment action for payments starting ██████████ which itself appears to be an arbitrary date as the home help provider was enrolled on ██████████. By doing so, the Department erred and its decision to recoup payments must therefore be reversed.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED that:

The Department's decision to seek recoupment is **REVERSED** and it must initiate both the reinstatement of any recouped payments and the stoppage of any further collection action.

Steven Kibit

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

Date Signed: ██████████

Date Mailed: ██████████

SK/db

cc: ██████████
██████████
██████████

***** 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.