

**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. 15-020145 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 his own behalf. ██████████, Appeals Review Officer, represented the Respondent Department of Health and Human Services (Department). ██████████, Adult Services Worker and ██████████, Financial Manager, appeared as witnesses for the Department.

State's Exhibit A pages 1-47 were admitted as evidence.

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 ██████████, the Department sent Appellant a Notice of Recoupment letter for over-issuance of HHS payments from ██████████ through ██████████.
3. On ██████████, the Department sent Appellant an Initial Collection Notification.
4. On ██████████, Appellant filed a request for a hearing with the Michigan Department of Health And Humans Services Administrative Tribunal to contest the Negative Action.

5. On ██████████, the Department sent Appellant a Final collection Notice with action to take place after ██████████.

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.

The Department caseworker testified that authorizations for payments go in every six months in advance based upon approved Time and Task, not based on actual logs. The payments are put on the system and are paid every month. However, the logs are only due every quarter so the department must recoup of there is an over payment.

Appellant testified on the record that the approved services were performed. The provider mailed the correct logs into the Department in a timely manner. The caseworker said that she did not receive the original logs. She sent Appellant new documentation logs to fill out. Appellant signed the the blank provider logs on ██████████. The ██████████ (care provider) representative was at his house and told him that she would deliver the papers to the actual provider, since the client could not get in touch with his provider and did not have transportation. The provider then filled out the documents and signed them on ██████████. The completed logs were received by the Department on ██████████.

There was no testimony on the record as to whether the warrants were one party warrants or two party warrants.

Adult Services Manual 165, page 4 explicitly states that an Administrative error occurs when:

A computer or mechanical process may fail to generate the correct payment amount to the client and/or provider resulting in an over-payment. The specialist must initiate recoupment of the overpayment from the provider or client, depending on who was overpaid (dual-party warrant or single-party warrant).

Specialist Errors

An adult services specialist error may lead to an authorization for more services than the client is entitled to receive. The provider delivers, in good faith, the services for which the client was not entitled to based on the specialist's error. When this occurs, no recoupment is necessary.

Note: If overpayment occurs and services were not provided, recoupment must occur. A computer or mechanical process may fail to generate the correct payment amount to the client and/or provider resulting in an over-payment. The specialist must initiate recoupment of the overpayment from the provider or client, depending on who was overpaid (dual-party warrant or single-party warrant).

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.

The provider filled out the logs for services actually performed during February, March and ██████████. The services performed were less than the services approved. Thus, this is **PROVIDER** error rather than client error, as the provider received the monies.

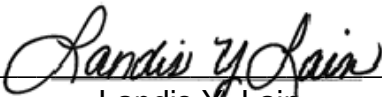
The record does not establish by the necessary competent, substantial and material evidence on the record that there is client error in the case of this overpayment. The record clearly establishes that there is provider error. The Department cannot recoup overpayments from the client in a case of provider 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 \$ [REDACTED] 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:

[REDACTED]

LYL [REDACTED]

Date Signed: December 22, 2015

Date Mailed: December 23, 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.