

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF COMMUNITY HEALTH**

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IN THE MATTER OF:

██████████,

Appellant,

_____ /

Docket No. 15-020965 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 ██████████. The Appellant appeared on her own behalf and offered testimony. ██████████, Appeals Review Officer, represented the Department. ██████████, Adult Services Worker (ASW) and ██████████, Finance Manager, MDHHS Medicaid Collection Unit appeared as witnesses for the Department.

ISSUE

Did the Department properly pursue recoupment against the Appellant for Home Help Services (HHS) for payments issued covering the time period of ██████████ through ██████████ 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. On or around ██████████, the Appellant signed and returned a Provider Interview checklist and a DHS 4676 Statement of Employment. The DHS 4676 and the checklist informed the Appellant that all changes must be reported to DHS within 10 days and that if the Provider is paid for services they did not perform, it must be paid back to the Department. (Exhibit A, pp. 15, 16; Testimony.)
2. From ██████████ through ██████████, the client the Appellant cared for was hospitalized. (Testimony.)
3. On or around ██████████, the ASW was informed of the client's hospitalization by an email. (Exhibit A, pp. 12, 13; Testimony.)

4. On [REDACTED], the ASW sent the Appellant a DHS-566, Collection Recoupment letter. The letter indicated the period of overpayment was a result of the client being hospitalized from [REDACTED] through [REDACTED] and further indicated an overpayment amount of \$ [REDACTED]. (Exhibit A, p. 11; Testimony.)
5. At no point in time prior to [REDACTED], did the Appellant notify the Department of the client's hospitalization. (Testimony.)
6. On or around approximately [REDACTED], the ASW confirmed with the Appellant the client's hospitalization from [REDACTED] through [REDACTED]. (Testimony.)
7. On [REDACTED], the Michigan Administrative Hearings System (MAHS) received from the Appellant a request for hearing. (Exhibit A, p. 4.)

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) 101, 12-1-2013, addresses HHS available to a client. This policy provides in part:

Home help services are defined as those tasks which the department is paying for through Title XIX (Medicaid) funds. These services are furnished to individuals who are **not** currently residing in a hospital, nursing facility, licensed foster care home/home for the aged, intermediate care facility (ICF) for persons with developmental disabilities or institution for mental illness. [ASM 101, p. 1 of 4, emphasis added].

ASM 135, 12-1-2013, addresses Home Help Providers and their responsibilities under the HHS program. This policy states in part:

- The client and provider are responsible for notifying the adult services specialist within **10 business days** of any change in providers or hours of care.

- The provider and/or client is responsible for notifying the adult services specialist within **10 business days** if the client is hospitalized.
- **Note:** Home help services **cannot** be paid the day a client is admitted into the hospital but **can** be paid the day of discharge. [ASM 135, p. 3 of 9].

ASM 165, 5-1-2013, 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.

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 physical and mentally capable of performing their responsibilities.
- The client cannot provide a justifiable explanation for withholding or omitting pertinent information.

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. [ASM 165 5-1-2013, pp. 1, 3].

The ASW testified the Appellant received payments for HHS that were authorized for the time period of ██████████ through ██████████ but that the client was hospitalized during this time period. The ASW further testified that policy does not allow for payments to be made during time periods of hospitalizations. The Appellant however argued that regardless of the policy, she still took care of the client while he was hospitalized because she was his mother and that it was her job to do so.

The above cited policy specifically addresses recoupment of payment for services that were not provided during periods of hospitalizations. As such, the Department was proper in seeking recoupment as during the time period in question, the client was hospitalized and not receiving in home care.

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly sought recoupment from the Appellant for the payment of Home Help Services from ██████████ through ██████████, totaling \$██████.

DECISION AND ORDER

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

IT IS THEREFORE ORDERED that:

The Department's decision in seeking recoupment is **AFFIRMED**. The overpayment amount was \$██████. The Appellant is responsible to the Department for an overpayment in the amount of \$██████.

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

[REDACTED]
Docket No. 15-020965 HHR
Decision and Order

Date Mailed: January 29, 2016

Date Mailed: January 29, 2016

CAA [REDACTED]

cc: [REDACTED]

***** 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.