STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
FOR THE DEPARTMENT OF HEALTH AND HUMAN SERVICES
P.O. Box 30763, Lansing, MI 48909
(800) 648-3397; Fax: (517) 373-4147

IN THE MATTER OF:

Docket No. 16-000033 HHR
Case No.

,

Petitioner,
_______________________/

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 Petitioner's request for a hearing.

After due notice, a hearing was held on . Petitioner appeared on her own behalf. , Appeals Review Officer, represented the Respondent Department of Health and Human Services (Department). , Health Care Investigator Office of Inspector General and , Financial Manager, appeared as a witnesses for the Department.

Respondent's Exhibit A pages 1-72 were admitted as evidence. The record was left open until to allow the Petitioner to submit evidence documents.

ISSUE

Whether the Department has established that Petitioner 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. Petitioner was a Home Help Services Provider for her aunt, Medicaid Beneficiary (Beneficiary).

2. On , an Adult Services Worker for County DHHS sent Beneficiary a home visit letter in preparation for the required annual redetermination.

3. The home visit was scheduled for .

4. On , Petitioner contacted the Worker, requesting that the case be closed immediately as Beneficiary was placed in a Nursing Home facility permanently.

5. In a general data run, aimed at identifying HHS providers who were paid for services while a beneficiary was in-patient (e.g. hospital, nursing home, etc.) it was discovered that Beneficiary was a resident of a nursing facility while also enrolled in the Home Help Program.

6. Petitioner was being paid for HHS while the client resided in a nursing home.

7. Following an investigation by the Department Office of Inspector General, a letter dated [redacted] was sent to the Petitioner seeking recoupment of the overpayment amount in the amount of $[redacted].

8. On [redacted] and [redacted], the Department sent Petitioner Medicaid Collections Unit Notification letters seeking the overpayment amount.

9. On [redacted], Petitioner 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.

> **Home Help Payment Services**
>
> Home help services are non-specialized personal care service activities provided under the independent living services program to persons who meet eligibility requirements.
>
> Home help services are provided to enable individuals with functional limitation(s), resulting from a medical or physical disability or cognitive impairment to live independently and receive care in the least restrictive, preferred settings.
>
> 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.

These activities **must** be certified by a Medicaid enrolled medical professional and may be provided by individuals or by private or public agencies. **The medical professional does not prescribe or authorize personal care services.** Needed services are determined by the comprehensive assessment conducted by the adult services specialist.

Adult Services Manual (ASM) 120, page 1

The Department is directed to verify a client's level of care to avoid duplication of services. The level of care will determine if the client is enrolled in other programs. ASM 105, page 4. In order to effectively coordinate home help services and avoid duplication of services, the client's level of care (LOC) must be reviewed to determine enrollment in other programs. Clients with a Nursing home Level of Care 02 are receiving services in:

- Nursing Facility
- Count Medical Facility
- Hospital long-term care Facility
- Hospital swing bed.

Clients with this level of care status cannot receive home help services while admitted to these facilities. ASM 125, page 11.

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.

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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.

<u>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.</u>

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 client and provider are responsible for notifying the adult services specialist within 10 business days of any change in the providers or hours of care. The provider and /or client is responsible for notifying the adult services specialist within ten days if the client is hospitalized. ASM 135 page 3

In the instant case, Petitioner stated that Beneficiary refused to sign the papers to be placed into in patient status and that they got her into the rehabilitation but not in-patient. They paid private pay to keep her there. They washed her clothes every day and cared for the Beneficiary in the rehabilitation center. She needed 24 hour care and

her aunt was staying there because her legs were leaking due to her congestive heart failure. She cared for the Beneficiary while she was at the rehabilitation center.

Respondent presents evidence on the record that indicates that Petitioner signed a Statement of Employment dated . The following Personal Care Services Provider Logs were signed by the Beneficiary and Petitioner: , , and . (Respondent's Exhibit A page 44) No other logs were found for the time period of in the Home Help file. Two party checks were made payable to the Provider and Beneficiary. All seven warrants issued from through were signed with two signatures; Petitioner's and Beneficiary's. (Respondent's Exhibit A pages 29-42)

Records indicate that Beneficiary was inpatient during the following dates:

- from through
- from to
- - from to
- from to
- - to

Claims date indicate that the Beneficiary died on . (Respondent's Exhibit A page 26)

The Office of Health Inspector General Investigation indicates that Petitioner was enrolled in the Home Help Program on . Her Home Help Provider was paid $ from to , while Beneficiary was in a Nursing home. Petitioner was a resident at a nursing home -) from through . Medicaid paid $ in room and board. (Respondent's Exhibit A page 24)

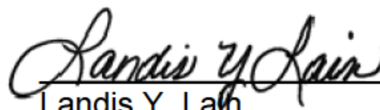
The record does establish by the necessary competent, substantial and material evidence on the record that there is provider error in the case of this overpayment. The record clearly establishes that there is provider error. The department must recoup payment from the provider for inaccurately representing what HHS services she provided to the client in . The Department's request for recoupment must be upheld 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 Petitioner under the circumstances.

IT IS THEREFORE ORDERED that:

> The Department's decision to seeking recoupment for HHS benefits paid to Petitioner for times that Beneficiary was hospitalized is **AFFIRMED**.



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

LYL/

cc:

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 Petitioner 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.