



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
Christopher Seppanen
Executive Director

MIKE ZIMMER
DIRECTOR

[REDACTED]

Date Mailed: April 6, 2016
MAHS Docket No.: 15-023411
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Corey Arendt

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 the Petitioner's request for a hearing.

After due notice, a hearing was held on [REDACTED]. [REDACTED] appeared on her own behalf. [REDACTED], Appeals Review Officer represented the Department of Health and Human Services (Department). [REDACTED], Field Agent from the Office of Inspector General (OIG) appeared as a witness for the Department.

Exhibits

Petitioner: None¹
Department: Exhibit A – Hearing Summary

ISSUE

Did the Department properly pursue recoupment against the Petitioner for Home Help Services (HHS) for payments issued covering the time period of [REDACTED] through [REDACTED] in the amount of \$ [REDACTED]?

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 [REDACTED], the Petitioner signed and returned a DHS 4676 Statement of Employment. The DHS 4676 informed the Petitioner 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, p. 27; Testimony.)

¹ Petitioner indicated she had some exhibits but that she did not submit them to MAHS in accordance with the requirements found in the notice of hearing scheduling the above captioned matter.

2. From [REDACTED] through [REDACTED], Petitioner was approved for and receiving HHS payments. During this time, the Petitioner's son [REDACTED] was designated as the Petitioner's HHS Provider. (Testimony.)
3. From [REDACTED] through [REDACTED], Mr. [REDACTED] was incarcerated at the [REDACTED]. On [REDACTED], Mr. [REDACTED] was transferred to prison. (Exhibit A, p. 41; Testimony.)
4. From [REDACTED] through [REDACTED], the Petitioner was incarcerated at the [REDACTED]. (Exhibit A, p. 43; Testimony.)
5. On [REDACTED], a warrant check was issued to the Petitioner for HHS performed in [REDACTED]. (Exhibit A, p. 25.)
6. On [REDACTED], a warrant check was issued to the Petitioner for HHS performed in [REDACTED]. (Exhibit A, p. 25.)
7. On [REDACTED], a warrant check was issued to the Petitioner for HHS performed in [REDACTED]. (Exhibit A, p. 25.)
8. On [REDACTED], a warrant check was issued to the Petitioner for HHS performed in [REDACTED]. (Exhibit A, p. 25.)
9. On [REDACTED], a warrant check was issued to the Petitioner for HHS performed in [REDACTED]. (Exhibit A, p. 25.)
10. On [REDACTED], a warrant check was issued to the Petitioner for HHS performed in [REDACTED]. (Exhibit A, p. 25.)
11. Each of the warrant checks in question contain both the signature of the Petitioner and [REDACTED]. (Exhibit A, pp 82-121.)
12. On [REDACTED], the Department sent the Petitioner a letter seeking recoupment for an overpayment of HHS benefits from [REDACTED] to [REDACTED] in the amount of \$[REDACTED]. (Exhibit A, p 76.)
13. On [REDACTED], the Department sent the Petitioner an Initial Collection letter seeking recoupment in the amount of \$[REDACTED]. (Exhibit A, p 78.)
14. During the timer periods in question, both the Petitioner and [REDACTED] had monthly visits while incarcerated. During these visits, it would be possible for checks to be presented and signed by either the Petitioner and/or [REDACTED]. (Exhibit A, pp 44-68; Testimony.)
15. On [REDACTED], the Michigan Administrative Hearings System

(MAHS) received the Petitioner's 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 OIG Agent testified the Petitioner received HHS warrants for services that were not provided and could not be provided as the Petitioner herself and/or her Provider were incarcerated during the time periods in question. Additionally, the OIG Agent testified

the signatures on the warrants matched other signatures of the Petitioner and that visitations at the correctional facilities would have allowed for the checks to be signed to be later cashed etc. During the hearing, the OIG Agent indicated the amount in question should be something different than what was on the collection/recoupment letters sent to the Petitioner and that the overpayment amount should actually be \$ [REDACTED].

The Petitioner alleged to have not signed the checks in question and that the checks paid to [REDACTED] were definitely not hers as all payments made to her [REDACTED] account were in cash.

The Petitioner did not provide any evidence to corroborate her claims regarding her not signing the checks or related to her [REDACTED] claim. Additionally troubling is the fact the Petitioner believed someone had forged her signature on the checks in question, yet at no time did she ever file a police report regarding the alleged fraud.

Lastly, the Petitioner argued the [REDACTED] facility in question had employees who were later found to be guilty of some type of fraud. Again, the Petitioner failed to present any evidence to corroborate her claims.

The above cited policy specifically addresses recoupment of payment for services that were not provided. As such, the Department was proper in seeking recoupment as during the time period in question, the Petitioner was either incarcerated or her Provider was incarcerated and she was 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 [REDACTED] through [REDACTED] in the amount of \$ [REDACTED].

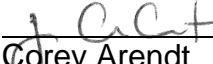
DECISION AND ORDER

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

IT IS THEREFORE ORDERED that:

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department's decision is **AFFIRMED**.

CA ■



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

NOTICE OF APPEAL: A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30763
Lansing, Michigan 48909-8139

DHHS

[REDACTED]

Petitioner

[REDACTED]

Agency Representative

[REDACTED]

DHHS Department Rep.

[REDACTED]

DHHS -Dept Contact

[REDACTED]