



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: April 27, 2016
MAHS Docket No.: 16-002804
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Landis Lain

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]. Petitioner [REDACTED] appeared on behalf of the Petitioner. [REDACTED], Appeals Review Officer; [REDACTED], Financial Manager; [REDACTED], Independent Living Specialist (ILS) appeared to testify and represent the Department of Health and Human Services (Department).

State's Exhibit A pages 1-28 and State's Exhibit B pages 1-4 were admitted as evidence.

ISSUE

Whether the Department appropriately recouped an over-issuance of Home Help Services (HHS) benefits 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. Petitioner is a Medicaid beneficiary
2. On [REDACTED], the Department caseworker sent Petitioner an Advance Negative Action Notice stating that Home Help Services would be terminated effective [REDACTED] because "I was unable to complete the required face-to-face contact, so you must contact the office by the above date to make an appointment for client and provider to complete an IN OFFICE review. If I am not contacted by the above date the case will close" (State's Exhibit A page 7)

3. On [REDACTED], the Department caseworker sent Petitioner an Advance Negative Action Notice stating that it has been determined that Home Help Services will be suspended. The reason for this action is: It has been brought to my attention that your chore provider stopped working for you on [REDACTED] but payments continued to go out and the checks were cashed. A recoupment will be processed, due to payments being received that were not owed. (State's Exhibit A page 9)
4. On [REDACTED], the Department caseworker sent Petitioner a Recoupment letter stating that an overpayment occurred in the Home Help Services case the time periods [REDACTED]. (State's Exhibit A page 10)
5. On [REDACTED], the Department sent Petitioner an Initial Collection Notice in the amount of \$[REDACTED]. (State's Exhibit A page 11)
6. On [REDACTED], the Michigan Administrative Hearing System received a Request for Hearing from Petitioner to contest the Recoupment Action.
7. On [REDACTED], the Department sent Petitioner a Final Collection Notification in the amount of \$[REDACTED] (State's Exhibit A page 12)
8. Petitioner conceded on the record that she cashed the check and paid another person to assist her because she still needed the HHS and assistance. (Testimony)

CONCLUSIONS OF LAW

The Medical Assistance Program (MA) 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 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.

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.

A computer or mechanical process may fail to generate the correct payment amount to the client and/or provider resulting in an overpayment. The specialist must initiate recoupment of the overpay-

ment 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.

Administrative

When a client makes a timely request (90 days) for an administrative hearing regarding a negative action, the proposed negative action is delayed pending the outcome of the hearing.

Overpayments result when one of the following occur:

- The hearing request is withdrawn.
- The client fails to appear for the hearing.
- The Department's negative action is upheld.

When any of the above takes place, the specialist must begin the recoupment process for any overpayments that occurred after the effective date of the negative action.

Adult Services Manual
(ASM) 165 05-01-2013,
Pages 1-6.

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. ASM 135 page 3

In the instant case, Petitioner did notify the caseworker that her HHS provider quit as of [REDACTED]. A face-to-face meeting was held with Petitioner and her new provider on [REDACTED]. The provider enrollment was completed and the new provider was given job aide to register through CHAMPS. (State's Exhibit A page 16)

Based on the evidence presented, the Department has established by the necessary competent, material and substantial evidence on the record that the Department improperly made payments to Petitioner for Home Help Services performed by an un-enrolled provider. Petitioner conceded on the record that she cashed the checks to pay a new provider because she still needed the help. The Department has established by a

preponderance of the evidence that it was acting in accordance with Department policy when it recouped HHS benefits paid while the client was either hospitalized. The decision to recoup over-issued benefits 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 properly recouped HHS benefits paid to Petitioner when Petitioner had an unenrolled provider from [REDACTED] through [REDACTED].

IT IS, THEREFORE, ORDERED that:

The Department's decision is **AFFIRMED**.

LL [REDACTED]



Landis Lain
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

Agency Representative

[REDACTED]
[REDACTED]
[REDACTED], MI
48933

DHHS-Location Contact

[REDACTED]
[REDACTED]
[REDACTED]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]

DHHS Department Rep.

[REDACTED]
[REDACTED]
[REDACTED]

DHHS -Dept Contact

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]