



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: [REDACTED]
MAHS Docket No.: 16-000887
Agency No.: 0
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Janice Spodarek

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 appeared and testified. [REDACTED] represented the Department of Health and Human Services (Department or Respondent). [REDACTED], Adult Services Worker (ASW), and [REDACTED], Financial Manager with the Respondent appeared as witnesses.

ISSUE

Did the Respondent properly pursue an over-issuance against the Petitioner for a Home Help Services (HHS) overpayment?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material and substantial evidence on the whole record, finds as material fact:

1. At all relevant times, Petitioner was a caregiver for HHS with the Michigan adult services program.
2. On [REDACTED], the beneficiary for whom Petitioner provides services passed away.
3. Unrefuted evidence is that Petitioner delivered logs showing some, but not all services provided up through and including [REDACTED]. (Exhibit A.5).

4. Petitioner timely reported the beneficiary's death to the beneficiary's DHS caseworker. The caseworker failed to notify the ASW until [REDACTED].
5. On [REDACTED] the Respondent issued a warrant for the period of [REDACTED] through [REDACTED] – the entire month of [REDACTED] in error. In [REDACTED] when the ASW was finally notified by the caseworker, the worker calculated an overpayment based on the period of time from the day of death – [REDACTED], through the end of the month – [REDACTED].
6. On [REDACTED], the ASW issued a DHS-566 to Petitioner informing her that she was overpaid a total of \$114.74. (Exhibit A.7). No hearing rights were included with the notice.
7. On [REDACTED] Ms. Laura Harrison issued an Initial Collection Notification informing Petitioner that she owes the adult services program \$114.74. The notice indicates that she has a right to a hearing if filed within 30 days; the standard hearing rights notice was not included. (Exhibit A; Testimony).
8. On [REDACTED] Petitioner filed a hearing request. (Exhibit A.4).

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, 11-1-2011, 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.

Administrative Hearing Overpayments

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.

ASM 165 11-1-2011,
Pages 1 and 3 of 6.

Here, unrefuted evidence is that the beneficiary passed away on [REDACTED]. Unrefuted evidence is that Petitioner informed the beneficiary's case worker timely. Unrefuted evidence is that Petitioner filed her logs showing care provided for [REDACTED], up to and including the day of death, which the Respondent did not dispute.

Here, the Respondent failed to issue a check only for the days that beneficiary was living, and for the days for which Petitioner certified that she provided care. The Respondent erred by providing a warrant for the entire month of [REDACTED]. Neither party disputes that Petitioner did not provide care after the day of death, nor that Petitioner did not attempt to receive payment for days for which she did not provide care. Rather, Petitioner argues that because it was the Respondent's error, she (the Petitioner) should not have to pay back the over-issuance.

Unfortunately for Petitioner, policy cited above specifically states that where there was an overpayment, and where services were not provided, the Respondent must do a recoupment on the overpayment. ASM, 165. As such, this ALJ must uphold the recoupment action.

DECISION AND ORDER

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

IT IS, THEREFORE, ORDERED that:

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

JS/cg



Janice Spodarek

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]

Petitioner

[REDACTED]

DHHS Department Rep.

[REDACTED]

DHHS -Dept Contact

[REDACTED]