



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: July 19, 2016
MAHS Docket No.: 16-003480
Agency No.: 0
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Robert J. Meade

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 began on May 11, 2016 and was continued and completed on July 19, 2016. Petitioner appeared on his own behalf. [REDACTED], Appeals Review Officer, represented the Department. [REDACTED], Financial Manager (May 11, 2016 only); [REDACTED], Department Analyst, Office of Inspector General; [REDACTED], Assistant Inspector General (May 11, 2016 only); and [REDACTED], Adult Services Supervisor (July 19, 2016 only); appeared as witnesses for the Department.

ISSUE

Did the Department properly pursue recoupment against Petitioner for an overpayment of Home Help Services (HHS) for periods when the recipient of those services was in a nursing facility?

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 [REDACTED], Petitioner signed up to be an HHS service provider to a Medicaid beneficiary, [REDACTED] by signing a Home Help Services Statement of Employment. (Exhibit A, pp 39-40, 50; Testimony).

2. On [REDACTED], the Department sent Petitioner and [REDACTED] an Advance Action Notice indicating that the HHS case was being closed because Petitioner was in a nursing facility. (Exhibit A, pp 43-44; Testimony)
3. Following an investigation by the Department, it was determined that Petitioner and [REDACTED] were paid for HHS while [REDACTED] was in a nursing facility from [REDACTED] to [REDACTED] and from [REDACTED] to [REDACTED]. (Exhibit A, pp 16-38, 51-57; Testimony)
4. On [REDACTED], the Department issued a certified letter to Petitioner informing him that an overpayment for HHS in the amount of [REDACTED] had been made for [REDACTED] care while he was in a nursing facility and that the Department was seeking to recover that amount from Petitioner. (Exhibit A, pp 13-14; Testimony).
5. On [REDACTED], the Department sent Petitioner an Initial Collection Notification, again informing Petitioner that an overpayment for HHS in the amount of [REDACTED] had been made for [REDACTED] care while he was in a nursing facility and that the Department was seeking to recover that amount from Petitioner. (Exhibit A, p 15; Testimony)
6. On [REDACTED], Petitioner's hearing request was received by the Michigan Administrative Hearing System. (Exhibit 1).

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, 12-01-2013, addresses the issue of covered HHS services:

Payment Services Home Help

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.

Services not Covered by Home Help

Home help services must **not** be approved for the following:

- Supervising, monitoring, reminding, guiding, teaching or encouraging (functional assessment rank 2).
- Services provided for the benefit of others.
- Services for which a responsible relative is **able** and **available** to provide (such as house cleaning, laundry or shopping). A responsible relative is defined as an individual's spouse or a parent of an unmarried child under age 18.
- Services provided by another resource at the same time (for example, hospitalization, MI-Choice Waiver).

Adult Services Manual (ASM) 135, 12-01-2013, addresses responsibilities of home help providers:

PROVIDER INTERVIEW

An initial face-to-face interview must be completed with the home help provider. A face-to-face or phone contact must be made with the provider at the six month review or redetermination to verify services are being furnished.

Explain the following points to the client and the provider during the initial interview:

- 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.

HOME HELP STATEMENT OF EMPLOYMENT (MSA-4676)

The purpose of the MSA-4676, Home Help Services Statement of Employment, is to serve as an agreement between the client and provider which summarizes the general requirements of employment. The form is completed by the adult services specialist as part of the provider enrollment process.

An employment statement must be signed by **each** provider who renders service to a client.

The statement of employment does the following:

- Instructs the provider to repay the State of Michigan for services they did not provide.

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.

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. (Emphasis added).

ASM 165 05-01-2013
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Petitioner testified that [REDACTED] was his mother's boyfriend and that he only agreed to sign on as his HHS provider because the woman who was taking care of him, [REDACTED] did not want to be his named provider because the income would affect her eligibility for other programs. Petitioner indicated that he met with [REDACTED], and Adult Services Worker [REDACTED] at [REDACTED] home in [REDACTED] to complete the paperwork. Petitioner testified that [REDACTED] told him that this was a common practice and the arrangement would have no financial impact on him at all. Petitioner indicated that he lived 90 miles away from [REDACTED] and could not actually provide the services to him and that this fact was understood by all involved. Petitioner testified that the signatures on the checks in question are not his and he never received any money for caring for [REDACTED] or

provided any care to [REDACTED]. Petitioner argued that [REDACTED] must have signed the checks and the State should be going after her. Petitioner admitted that he did receive a 1099 for the HHS payments after [REDACTED] died, and he paid the related taxes. Petitioner testified that he simply thought that he was doing [REDACTED] a kindness and he should not have to repay this money because he never received it.

The Department's ASW ([REDACTED]) testified that [REDACTED] did need HHS and wanted [REDACTED] to be his HHS provider, but she did not want to do it, so [REDACTED] arranged for Petitioner to be his HHS provider. The Department's ASW indicated that there was no discussion at the meeting in [REDACTED] about a bank across the street or direct deposit and that the Department still does not to this day use direct deposit for HHS payments. The Department's ASW testified that HHS policy does not allow someone to become an HHS provider and then have a subcontractor actually do the work and that he left the [REDACTED] meeting believing that Petitioner was going to serve as [REDACTED] HHS provider. The Department's ASW also indicated that it was the usual practice for HHS payments to be made out to both the client and the provider and mailed to the client's home, which is what was done here. The Department's ASW testified that he did not conduct another home visit with [REDACTED] prior to [REDACTED] death.

The above cited policy specifically addresses recoupment of payment for services that were not provided to a client. It was uncontested here that [REDACTED] was in a nursing facility from [REDACTED] to [REDACTED] and from [REDACTED] to [REDACTED] and that the Department also issued HHS payments to [REDACTED] and Petitioner for that same period. It is also uncontested that the checks during these periods were made payable to Petitioner and [REDACTED] and that the checks were endorsed and cashed. While Petitioner's testimony that he never provided services to [REDACTED] and never received payment for those services was credible, ultimately he made himself legally liable for those payments when he signed up to be [REDACTED] HHS provider. Unfortunately, the Department would have no jurisdiction to go after [REDACTED], if she was in fact the person signing and cashing the HHS checks, because Irene never signed up to be [REDACTED] HHS provider. Given that no-one could have provided services to CC for the times he was in a nursing facility, it was appropriate for the Department to seek recoupment. Petitioner can always seek reimbursement from [REDACTED] through a separate legal action if he believes she is the person responsible for cashing the [REDACTED] checks when CC was in a nursing facility.

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly sought recoupment from the Petitioner for Home Help Services totaling [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 Petitioner.

IT IS THEREFORE ORDERED that:

The Department's decision in seeking recoupment is **AFFIRMED**. The overpayment amount is [REDACTED].



RM/cg

Robert J. Meade

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

Petitioner

[REDACTED]

Agency Representative

[REDACTED]

DHHS Department Rep.

[REDACTED]

DHHS -Dept Contact

[REDACTED]