



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

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

Date Mailed: March 6, 2017  
MAHS Docket No.: 16-018209  
Agency No.: [REDACTED]

[REDACTED]

**ADMINISTRATIVE LAW JUDGE: Steven Kibit**

**DECISION AND ORDER**

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.*, and upon the Petitioner's request for a hearing.

After due notice, a telephone hearing was held on February 8, 2017. Petitioner appeared and testified on his own behalf. [REDACTED], Appeals Review Officer, represented the Respondent Department of Health and Human Services (Department). [REDACTED], Adult Services Specialist, and [REDACTED], Adult Services Supervisor, testified as witnesses for the Department.

**ISSUE**

Did the Department properly decide to recoup payments made to Petitioner?

**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 August 5, 2015, Petitioner was approved for HHS, with an effective start date of June 12, 2015. (Exhibit A, page 5).
2. For the time period relevant to this case, Petitioner was approved for [REDACTED] of HHS per month, with net payments of [REDACTED] being issued each month. (Exhibit A, page 15).
3. On January 28, 2016, Petitioner advised the Adult Services Specialist that he was scheduled for hip replacement surgery on March 1, 2016. (Exhibit A, page 14).

4. He also asked if his provider would still be paid while he was in the hospital, as she would still be running errands and assisting him, and the Adult Services Specialist informed him that the provider could not be paid while Petitioner was in the hospital. (Exhibit A, page 14).
5. Petitioner also stated that he would keep the Adult Services Specialist apprised of any hospital stay and discharge. (Exhibit A, page 14).
6. On April 7, 2016, a two party warrant was made out for Petitioner and his provider in the amount of [REDACTED] for HHS provided in March of 2016. (Exhibit A, page 9).
7. Both Petitioner and his provider signed the warrant. (Exhibit A, page 10).
8. On June 15, 2016, during Petitioner's annual redetermination, the Adult Services Specialist learned that Petitioner was hospitalized from March 1, 2016 to March 7, 2016. (Exhibit A, page 14; Testimony of Adult Services Specialist).
9. On July 21, 2016, the Department sent Petitioner written notice that it had determined that an overpayment occurred for the time period of March 1, 2016 to March 7, 2016. (Exhibit A, page 7).
10. The amount of the overpayment was identified as [REDACTED] and it was stated that an overpayment occurred because Petitioner had been hospitalized during that time period. (Exhibit A, page 7).
11. On November 10, 2016, the Department sent Petitioner an Initial Collection Notification providing that Petitioner had been previously notified of his debt to the Department and that Department would implement a collection action if it did not hear from Petitioner by November 24, 2016. (Exhibit A, page 8).
12. On December 13, 2016, the Michigan Administrative Hearing System (MAHS) received the request for hearing filed in this matter. (Exhibit A, page 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 statutes, 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.

Regarding recoupment of payments for HHS, Adult Services Manual (ASM) 165 (8-1-2016) provides in part:

### **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**

A client error occurs when the client receives more benefits than they were entitled to because the client provided incorrect or incomplete information to the department.

A client error also exists when the client's timely request for a hearing results in deletion of a negative action issued by the department and one of the following occurs:

- The hearing request is later withdrawn.
- The Michigan Administrative Hearing Services (MAHS) denies the hearing request.
- The client or authorized representative fails to appear for the hearing and MAHS gives the department written instructions to proceed with the negative action.
- The hearing decision upholds the department's actions.

Client error can be deemed as intentional or unintentional. If the client error is determined to be intentional, refer to ASM 166, Fraud -Intentional Program Violation.

### **Unintentional Client Overpayment**

Unintentional client overpayments occur when either:

- The client is unable to understand and/or perform their reporting responsibilities to the department due to physical or mental impairment.

**Example:** The client was unable to fulfill his or her reporting responsibilities due to a hospitalization. However, the specialist must identify if this scenario falls within the scope of provider error.

- The client has a justifiable explanation for not giving correct or full information.

All instances of unintentional client error must be recouped.  
**No fraud referral is necessary.**

\* \* \*

## **PREVENTION OF OVERPAYMENTS**

During the initial assessment and subsequent case reviews, the adult services specialist must inform the client and provider of their reporting responsibilities and act on the information reported back to the department prior to an overpayment occurring. The client and/or provider should be reminded of the following:

- Home help recipients are required to give complete and accurate information about their circumstances.
- Recipients and providers of home help are required to notify the adult services specialist within **10 business days** of any changes including but not limited to hospitalization, nursing home or adult foster care/home for the aged admissions.
- The recipient and/or provider agree to repay or return any payments issued in error to the State of Michigan for home help services not rendered.
- A timely hearing request can suspend a proposed reduction in the approved cost of care. However, the client must repay the overpayment amount if either:
  - The hearing request is later withdrawn.
  - The Michigan Administrative Hearings System (MAHS) denies the hearing request.
  - The client or authorized representative for the hearing fails to appear for the hearing and MAHS give the department written instructions to proceed with the negative action.
  - The hearing decision upholds the department's actions.

\* \* \*

## **RECOUPMENT METHODS FOR ADULT SERVICES PROGRAMS**

The MDHHS Medicaid Collections Unit (MCU) is responsible for recoupment of overpayments for the adult services programs. The adult services specialist is responsible for notifying the client or provider in writing of the overpayment.

The adult services specialist **must not** attempt to collect overpayments by withholding a percentage of the overpayment amount from future authorizations or reducing the full amount from a subsequent month.

### **Recoupment Letter for Home Help (DHS-566)**

When an overpayment occurs in the home help program, the adult services specialist **must** complete the DHS-566, Recoupment Letter for Home Help, located under the forms module in ASCAP.

ASCAP will solicit all necessary information to complete this letter. The specialist must supply the following:

- Determine if the recoupment is solicited from the client or provider.
- The reason for recoupment.
- Warrant details and service period.
- The **exact time period** in which the overpayment occurred.
- The amount of the overpayment.

**Note:** The overpayment amount is the net amount (after the FICA deduction), not the cost of care (gross) amount.

### **Additional Instructions When Completing DHS-566**

Consider the following points when completing the DHS-566:

- If the overpayment occurred over multiple months, the DHS-566 will reflect the entire amount to be recouped.

**Note:** A separate DHS-566 is not required to reflect an overpayment for multiple months for the same client.

- Two party warrants issued in the home help program are viewed as client payments. Any overpayment involving a two party warrant must be treated as a client overpayment.

**Exception:** If the client was deceased or hospitalized and did not endorse the warrant, recoupment must be from the provider.

- Overpayments must be recouped from the provider for single party warrants.
- **When there is a fraud referral, do not send a DHS-566 to the client/provider** (refer to ASM 166, Fraud - Intentional Program Violation).
- Warrants that have **not** been cashed are **not** considered overpayments. These warrants must be returned to Treasury and canceled.

*ASM 165, pages 1-6  
(Underline added for emphasis)*

Here, the Department decided to recoup \$ [REDACTED] in alleged overpayments for HHS for the time period of March 1, 2016 through March 7, 2016.

In support of that decision, the Adult Services Specialist testified, while Petitioner and his provider were sent a two party warrant for HHS provided in March of 2016, she subsequently learned from Petitioner that he had been hospitalized during part of that month. She also testified that Petitioner had previously discussed an upcoming surgery, but never confirmed any hospitalization until months after the warrant for March of 2016 went out. The Adult Services Specialist further testified that the applicable policy provides that HHS cannot be paid for times when a beneficiary is hospitalized

and that she therefore sent a letter notifying Petitioner of an overpayment. According to the Adult Services Specialist, the amount of the overpayment is determined by the Department's computer system after the worker enters the number of disqualified days. She was not sure what the provider log for March of 2016 reported regarding services and if the provider claimed to have provided services while Petitioner was in the hospital.

In response, Petitioner testified that there is no structure in the Department's system and any overpayment is not his fault. He also testified that he was told his only job was to pick out a provider, which he did, and that he has no idea what hours he is authorized for or how much the provider makes per hour. Petitioner further testified that he discussed the surgery with the specialist and provider prior to the hospitalization and, based on that conversation, his provider's log did not identify any services for those days. Regarding the hospitalization itself, Petitioner testified that his provider took him to-and-from the hospital and helped him throughout his stay.

Given the record in this case, the undersigned Administrative Law Judge finds that the Department properly seeks to recoup an overpayments for HHS for the time period of March 1, 2016 through March 7, 2016. The essential facts are undisputed in this case and they show that, while Petitioner was in the hospital during that time period, a full warrant was subsequently issued to and signed by Petitioner and his home help provider in violation of the policy that HHS cannot be provided while a client is in the hospital. The full warrant therefore included an overpayment and, while subsequent provider log may or may not have reflected any care during that time, the error was still caused by Petitioner and his provider given that they failed to report the hospitalization within ten business days of it occurring, as required by policy. Moreover, issues with two party warrants, such as the one at issue in this case, are treated as client error pursuant to the above policy and, while Petitioner's error may have been unintentional, it was still an error and, per the above policy, all instances of unintentional client error must be recouped

Accordingly, while Petitioner's error may not have not intentional, the above policy is clear and Petitioner was overpaid. Accordingly, the undersigned Administrative Law Judge finds that, based on the above findings of fact and conclusions of law, the Department properly sought recoupment 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 in the amount of [REDACTED]

**IT IS THEREFORE ORDERED** that:

The Department's decision in seeking recoupment is **AFFIRMED**.



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**Steven Kibit**  
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 Department Rep.**

[REDACTED]  
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