



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED], MI [REDACTED]

Date Mailed: February 8, 2022
MOAHR Docket No.: 21-005707
Agency No.: [REDACTED]
Petitioner: [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 January 19, 2022. Petitioner appeared and testified on her own behalf. [REDACTED], Petitioner's former caregiver, also testified as a witness for Petitioner. Leigha Burghdoff, Appeals Review Officer, represented the Respondent Department of Health and Human Services (DHHS or Department). Carol Wegener, Investigative Unit Manager with the Department's Office of Inspector General (OIG), and Sheryl Bowers, Adult Services Worker, testified as witnesses for the Department.

During the hearing, the Department submitted an evidence packet that was admitted into the record as Exhibit A, pages 1-95. Petitioner did not submit any proposed exhibits.

ISSUE

Did the Department properly decide to recoup \$ [REDACTED] in payments from 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. Petitioner is a Medicaid beneficiary who was approved for Home Help Services (HHS) through the Department in January of 2019. (Exhibit A, page 47).

2. Starting in February of 2020, [REDACTED] became Petitioner's approved home help provider. (Exhibit A, page 52).
3. Petitioner was also in a relationship with [REDACTED] at that time. (Testimony of Petitioner; Testimony of [REDACTED]).
4. [REDACTED] then provided Petitioner with the approved HHS for the months he was her approved provider. (Testimony of Petitioner; Testimony of [REDACTED]; Testimony of Investigative Unit Manager).
5. The Department also sent warrants/checks, in the name of both Petitioner and her provider, as payment for those services. (Exhibit A, pages 53-86).
6. However, while both Petitioner and [REDACTED] were named on the warrants, only Petitioner signed them when they were cashed. (Exhibit A, pages 53-86; Testimony of Petitioner).
7. On September 3, 2020, [REDACTED] reported no issues during a routine review. (Exhibit A, page 52; Testimony of [REDACTED]; Testimony of ASW).
8. On March 3, 2021, [REDACTED] reported no issues during a routine review. (Exhibit A, page 51; Testimony of [REDACTED]; Testimony of ASW).
9. On September 20, 2021, during another routine review, [REDACTED] reported that, while he had worked for Petitioner, he never received any checks or payment, and that Petitioner cashed all the checks. (Exhibit A, page 51; Testimony of [REDACTED]; Testimony of ASW).
10. The ASW then referred the case to the Department's Office of Inspector General (OIG). (Exhibit A, page 51; Testimony of ASW).
11. On September 27, 2021, Petitioner reported that she was getting married and no longer needed services, and her HHS case was closed. (Exhibit A, page 50).
12. During its investigation, the OIG reviewed the warrants and determined that checks in the name of Petitioner and her provider had been issued and cashed for services provided during the period of February 1, 2020, to May 31, 2021. (Testimony of Investigative Unit Manager).
13. It also determined that those checks were only signed by Petitioner. (Testimony of Investigative Unit Manager).

14. It further attempted to speak with [REDACTED] but was unable to do so or even leave him a message. (Testimony of Investigative Unit Manager).
15. It did speak with Petitioner, who reported that she would cash the checks herself and give the money to Petitioner. (Testimony of Petitioner).
16. On November 15, 2021, the Department sent Petitioner written notice that it had determined that an overpayment for HHS had occurred for the period of February 1, 2020 to May 31, 2021. (Exhibit A, pages 12-13).
17. The amount of the overpayment was identified as \$ [REDACTED], and it was stated that an overpayment occurred because "Client cashed warrants (provider did not endorse/claims he was not paid)". (Exhibit A, page 12).
18. The notice also advised Petitioner that, if she disagreed with the findings, she could request an administrative hearing. (Exhibit A, page 13).
19. On December 7, 2021, the Michigan Office of Administrative Hearings and Rules (MOAHR) received the request for hearing filed in this matter with respect to the Department's recoupment action. (Exhibit A, pages 10-44).

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.

Policies regarding HHS are found in the Adult Services Manual (ASM) and, while that manual was revised several times during the period at issue in this case, all the relevant policies regarding HHS payments and recoupments remained essentially the same.

In particular, ASM 135, page 2, provides that HHS are "a benefit to the client and earnings for the caregiver" while, with respect to payments, ASM 140 states in part:

Home help services payments to providers must be:

- Authorized for a specific period of time and payment amount. The authorized tasks are

determined by the comprehensive assessment in MiAIMS and will automatically include tasks that are ranked a level 3 or higher.

- **Note:** The adult services worker can authorize an ongoing Home Help payment for up to six months, not to exceed the next review month, for individual caregivers. Effective 10/1/19, payments to agency providers can only be made after the MSA-1904, Home Help Agency Invoice, is received.
- Authorized **only** to the person or agency providing the hands-on services.
- **Note:** An entity acting in the capacity of the client's fiscal intermediary is not considered the caregiver of Home Help and **must not** be enrolled as a Home Help agency; see ASM 135, Home Help Caregivers.
- Made payable as dual-party checks to clients and individual caregivers and single-party checks to agency providers.

Exception: There are circumstances where authorizations payable only to the individual caregiver are appropriate, for example, the client is physically or cognitively unable to endorse the warrant. All single-party authorizations paid directly to individual caregivers must be approved by the adult services supervisor. Supervisor approval for single-party checks paid to agency providers is not required.

ASM 140, pages 1-2

Moreover, with respect to overpayments and the recoupment process, ASM 165 states in part:

Overview

The Michigan Department of Health and Human Services (MDHHS) is responsible for 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.

Overpayment Types

The overpayment type identifies the cause of an overpayment:

- Client errors.
- Provider errors.
- Administrative or departmental errors.
- Administrative hearing upheld the department's decision

Appropriate action must be taken when any of these causes occur.

Client Errors

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

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 Office of Administrative Hearings and Rules (MOAHR) denies the hearing request.
- The client or authorized representative fails to appear for the hearing and MOAHR gives the department written instructions to proceed with the negative action.
- The hearing decision upholds the department's actions.

Intentional Client Overpayment

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

Unintentional Client Overpayment

Unintentional client overpayments occur with either of the following:

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

* * *

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 worker is responsible for notifying the client, individual caregiver, or agency provider in writing of the overpayment.

The adult services worker **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.

DHS-566, Recoupment Letter for Home Help

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 MiAIMS.

MiAIMS will generate all necessary information to complete this letter. The ASW 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 calculated using the **net** amount of the payment (after the FICA tax deduction), not the cost of care (gross) amount. The initial calculation for the recoupment will be based on the average daily rate which is determined by taking the monthly net amount and dividing by 30.4375. (The 30.4375 is an average number of days per month over a four-year period to include a leap year. This calculation is used by the federal government for monthly payroll.) The ASW will then take this amount and multiply number of days in a facility to get the recoupment amount.

Additional Instructions When Completing DHS-566

Consider the following points when completing the DHS-566:

- If the overpayment occurred over multiple months, and multiple warrants, one DHS 566 will need to be completed for each warrant number. MiAIMS allows only one warrant per recoupment action. Dual-party warrants issued in the Home Help program are viewed as client payments. Any overpayment involving a dual-party warrant must be treated as a client overpayment.

Exception: If the client did not endorse the warrant, recoupment must be from the individual caregiver. This may occur if the client is deceased, hospitalized, nursing home admittance, or incarceration.

This list is not inclusive.

- Overpayments must be recouped from the individual caregiver or agency provider for single party warrants.
- **When there is a fraud referral, do not send a DHS-566 to the client, individual caregiver, or agency**

provider; see 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

Here, a referral was made to OIG pursuant to the above policy and, with respect to fraud and intentional program violations, ASM 166 states in part:

Overview

Intentional Program Violation (IPV) occurs when the client, individual caregiver, agency provider, or client's authorized representative intentionally make a false or misleading statement, hides, or misrepresents/withholds facts to receive or to continue receiving benefits. IPV is considered fraud and must be reported to the Michigan Department of Health and Human Services (MDHHS) Office of Inspector General (OIG).

Client Suspected of Intentional Program Violation (IPV)

Suspected IPV means an overpayment exists when all three of the following conditions occur:

- The client (or legally responsible party) **intentionally** failed to report information or gave incomplete or inaccurate information needed to make a correct benefit determination.
- The client was clearly instructed regarding his or her reporting responsibilities to the Department.
- **Note:** A signed DHS-390, Adult Services Application instructs the client of their reporting responsibilities. The adult services worker (ASW) must reiterate the client's responsibility to report any changes **within 10 business days** during the client case reviews.
- The client has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill their reporting responsibilities.

An IPV is suspected when there is credible evidence that the client has **intentionally** withheld or misrepresented information for the **purpose** of establishing, maintaining, increasing, or preventing reduction of program benefits or eligibility. In such cases where these conditions exist, the ASW must make a fraud referral to the OIG.

Example: The client (or legally responsible party) intentionally reports inaccurate or incomplete information to conduct an accurate comprehensive assessment of need for Home Help services.

No recoupment action is taken on cases that are referred to OIG for investigation, while the investigation is being conducted.

* * *

OIG Referral Criteria

When an adult services worker believes fraud has occurred within the Home Help program, the ASW must make a referral to the Office of Inspector General (OIG). Prudent judgement should be used in evaluating an overpayment for a suspected IPV.

Consider the following questions when reviewing the case for fraud:

- Does the case record indicate that department staff advised the client of his or her rights and responsibilities?
- **Note:** The DHS-390 instructs clients of their rights and responsibilities; however, the ASW must remind the client, individual caregiver, or agency provider of his or her reporting responsibilities at each case review.
- Does the case contact in MiAIMS reflect the client's acknowledgement of these rights and responsibilities?
- Did the client, individual caregiver, or agency provider neglect to report timely when required to do so after being informed of their responsibility to report?

- Did the client, individual caregiver, or agency provider make false or misleading statements?
- Does the client, individual caregiver, or agency provider error meet suspected IPV criteria?

Home Help Fraud/IPV Scenarios

The following scenarios are provided as guidance for when a Home Help fraud referral should be made to the Office of Inspector General:

- Client alters or forges the DHS-54A, Medical Needs form in order to become eligible for services.
- Client forges the individual caregiver signature on a dual-party warrant and services were **not** provided.
- **Note:** If the client forges the individual caregiver's signature on a dual-party warrant and services **were** provided, this becomes a civil matter and should **not** be referred to OIG.
- Client, individual caregiver, or agency provider has an arrangement to split the warrant and services were not provided . . .

ASM 166, pages 1-3
(Underline and Italics added for emphasis)

Here, the Department seeks to recoup \$ [REDACTED] in alleged overpayments made to Petitioner during the period of February 1, 2020 to May 31, 2021, on the basis that, while services were provided and warrants appropriately issued in the name of both Petitioner and her provider, Petitioner improperly cashed the checks herself and the provider did not receive payment.

Petitioner disputes the factual allegations made by the Department, with both Petitioner and her former provider testifying that, while Petitioner cashed the checks herself, she then paid the provider what he was owed, and the provider only later made a false report to the ASW out of anger toward Petitioner.

Given the record and applicable policies in this case, the undersigned Administrative Law Judge finds that, regardless of that factual dispute and even if everything the Department argued is true, the Department's decision to recoup payments was improper.

It is undisputed that the services were provided and, in such circumstances, ASM 166 provides that, even if the client forged a caregiver's signature on a warrant, which is the equivalent to what the Department alleges here, any dispute over payment is to be a civil matter between the client and provider, and not the subject of any fraud referral or recoupment.

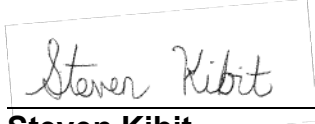
It appears that there is no dispute between Petitioner and her former provider over payment in this case given their sworn testimony, but, even if there was, there is still no basis for recoupment where the services were provided; the Department paid for them; and the applicable policies do not provide for a fraud referral or recoupment.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department improperly decided to recoup \$ [REDACTED] in payments from Petitioner.

IT IS THEREFORE ORDERED that:

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



Steven Kibit
Administrative Law Judge

SK/tem

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 Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR Rehearing/Reconsideration Request.

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

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

DHHS -Dept Contact

Michelle Martin
Capitol Commons
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Lansing, MI 48909
MDHHS-Home-Help-Policy@michigan.gov

DHHS-Location Contact

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DHHS Department Rep.

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