



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: November 17, 2022

MOAHR Docket No.: 22-004696

Agency No.: [REDACTED]

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 telephone hearing was held on November 16, 2022. [REDACTED] Petitioner's daughter, provider and Authorized Hearing Representative, appeared and testified on Petitioner's behalf. Leigha Burghdoff, Appeals Review Officer, appeared on behalf of Respondent, Michigan Department of Health and Human Services (Respondent, MDHHS or Department). Dustin Hollenbeck, Adult Services Worker, and Laura Harrison, Manager, Collections, appeared as witnesses for the Department. Mary McGrath and Sheri Buck appeared as observers for the Department.

At the commencement of the hearing, Respondent asked that this matter be dismissed because the request for hearing (received October 17, 2022) was received more than 30 days after the Second Collection Notice, dated August 29, 2022. The Second Collection Notice provides parties appeal rights and indicates that any appeal must be received within 30 days. However, it was determined that Petitioner's AHR did file a timely request for hearing on September 7, 2022, but that case was originally scheduled as a Home Help Provider case in her name (see docket number 22-003954-HHP). Given the above, Respondent's motion for dismissal was denied and the hearing continued.

ISSUE

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

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 began receiving HHS on or about October 23, 2000. (Exhibit A, p 8; Testimony).
2. On June 9, 2022, Petitioner and her provider/daughter were paid via a dual-party check for the full month of HHS in May 2022. (Exhibit A, pp 13-15)
3. At some point after June 9, 2022, the Department received notification from [REDACTED] Hospital that Petitioner was hospitalized between [REDACTED] 2022 and [REDACTED] 2022 and the hospital was paid [REDACTED] by Medicaid for her care. (Exhibit A, p 12; Testimony)
4. The Department determined that an overpayment of [REDACTED] occurred because Petitioner and her daughter/provider were paid for HHS on dates when the hospital was being paid for Petitioner's care by Medicaid. Per policy, the Department did not seek to recoup HHS for the date Petitioner was discharged from the hospital, [REDACTED] 2022. (Exhibit A, pp 16-18; Testimony)
5. On July 22, 2022, the Department sent Petitioner a recoupment letter seeking to recoup [REDACTED] for the period Petitioner was hospitalized in May 2022. (Exhibit A, pp 9, 14-15, Exhibit B; Testimony)
6. On August 29, 2022, the Department sent Petitioner a Second Collection Notice regarding the overpayment. This Notice indicated that if Petitioner wished to contest the overpayment, she needed to file an appeal within 30 days. (Exhibit A, p 19; Testimony)
7. On October 17, 2022, Petitioner's hearing request was received by the Michigan Office of Administrative Hearings and Rules.¹ (Exhibit A, pp 5-6).

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.

¹ See above regarding the timeliness of Petitioner's appeal.

Adult Services Manual (ASM) 101, 04-01-2018, 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, 04-01-2022, addresses responsibilities of home help providers:

CAREGIVER INTERVIEW

The ASW must complete an initial face-to-face interview with all Home Help caregiver(s). The ASW must make a face-to-face or phone contact with the caregiver(s) at the six-month review to verify receipt of services. If

the last review was a phone contact, a face to-face contact with the caregiver is mandatory for the next review. The ASW must document the contact in MiAIMS by selecting 'face-to-face-provider' as the contact type and indicating that the contact is an SOP contact, under the Contacts module.

The caregiver must present a picture identification (ID) card that includes his/her name for verification. The picture ID may include driver's license/state ID, passport, or employee ID. Expired IDs are acceptable if the adult services worker can verify identity.

Explain the following points to the client and the caregiver(s) during the initial interview:

- Home Help services are a benefit to the client and earnings to the caregiver.
- The client employs the individual caregiver, not the State of Michigan.
- As the employer, the client has the right to hire and fire the caregiver.
- The caregiver must be enrolled in the Community Health Automated Medicaid Processing System (CHAMPS) and undergo a criminal history screen. The screening must be completed and passed before a provider can be paid to provide Home Help services.
- The caregiver must keep their contact information up to date in CHAMPS; see caregiver address changes in this item.
- Medicaid funds the Home Help program and will not authorize payments if the client's Medicaid eligibility is inactive.
- A caregiver who receives public assistance must report all income received as a Home Help caregiver to their family independence specialist (FIS) or eligibility specialist (ES).
- Do not pay the caregiver if the client is unavailable due to hospitalizations, placement in a nursing home, institution for mental disease, home for the aged (HFA), adult foster care (AFC) or incarceration.
 - Do not pay for Home Help services on the day a client is admitted to a hospital, nursing home, institution for mental disease, HFA, AFC, or incarceration.
 - Home Help services can be paid on the date of discharge from a hospital (effective 02/25/2020).

- Home Help services can be paid on the date of discharge from a nursing home, institution for mental disease, HFA, AFC placement, or incarceration (effective 9/01/2021).
- Do not pay for Home Help services if the caregiver is incarcerated.
- The client and/or individual caregiver is responsible for notifying the ASW within 10-business days of any change; including but not limited to hospitalizations, nursing home, or adult foster care admissions.
- The client and/or individual caregiver is responsible for notifying the ASW within 10-business days of a change in individual caregiver or discontinuation of services. Payments must only be authorized to the individual/agency providing the approved services.
 - Home Help warrants can only be endorsed by the individual(s) listed on the warrant.
 - Home Help warrants are issued only for the individual/agency named on the warrant as the authorized caregiver.
 - If the individual/agency named on the warrant does not provide services or provides services for only a portion of the authorized period, the warrant must be returned.

Note: Failure to comply with any of the above may be considered fraudulent or require recoupment.

- Any payment received for Home Help services not provided must be returned to the State of Michigan.
- Accepting payment for services not rendered is fraudulent and could result in criminal charges.
- The individual caregiver must submit an electronic services verification (ESV) monthly to confirm Home Help services were provided.

Exception: Individual caregivers who are unable to submit a service verification electronically must submit a paper service verification (PSV) form monthly.

- Home Help warrants are issued as dual-party and mailed to the client's address.

Exception: There are circumstances where a single-party warrant to the individual caregiver only is appropriate, for example, the client is physically or cognitively unable to endorse the warrant. Authorizations to Home Help agency providers are payable to the provider only (single-party).

- Report all earned income to the IRS; see www.irs.gov.
- No federal, state, or city income taxes are withheld from the warrant.
- Social Security and Medicare tax (FICA) are withheld from individual caregiver Home Help warrants.
- Parents who are caring for an adult child do not have FICA withheld.
- Note: Parents who wish to have FICA withheld must be assigned in MiAIMS as 'other relative' in the provider assignment screen.
- All individual caregivers will receive a W-2.
- Agency providers will receive a 1099.
- The client and individual caregiver and/or agency provider must sign the MSA-4676, Home Help Services Agreement, before authorizing payment.

Emphasis added

Adult Services Manual (ASM) 165, 04-01-2022, addresses the issue of recoupment:

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.

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 ASW must complete the DHS-566, Recoupment Letter for Home Help, located in 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, individual caregiver, or agency provider.
- The reason for recoupment.
- Warrant details and service period.
- The exact time period in which the overpayment occurred.
- The amount of the overpayment.

The overpayment amount is determined by totaling the time associated for each of the tasks not provided. The recoupment is based on the gross amount of payment. If FICA was deducted from the original warrant, it must be deducted from the recoupment. FICA is calculated by multiplying the gross amount of the recoupment by 7.65 percent.

Note: Recoupments for services provided prior to April 1, 2022, should follow the previous recoupment process unless the client or caregiver provided additional information to justify a different calculation for the recoupment. Example: Client receives personal care services two days a week and was home on both days to receive services.

Consider the following points when completing the DHS-566:

- If the overpayment occurs over multiple months and/or multiple warrants, the ASW may complete one DHS-566 to reflect the entire amount to be recouped. MiAIMS allows multiple warrants per recoupment action with a maximum of five warrants per DHS-566.
- 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 cancelled.

Distribution of the DHS-566

Upon completion of the DHS-566, Recoupment Letter, in MiAIMS, once print has been selected, a copy of the DHS-566 is electronically forwarded to the MDHHS Medicaid Collections Unit mailbox at MDHHS-Collections-Unit@michigan.gov.

The ASW sends two copies to the individual who owes the money. One copy is for their records and one copy is to return to MDHHS Medicaid Collections Unit along with a check or money order for the overpayment amount.

An electronic version of the DHS-566, Recoupment Letter, is stored in MiAIMS under the Contacts module.

Emphasis added

The Department's witness testified that an overpayment letter was issued to Petitioner after an investigation determined that Petitioner and her provider were paid for HHS while Petitioner was in the hospital. The Department's witness indicated that MDHHS conducts a data run for all HHS recipients and sends the local office a list of individuals who were in the hospital and receiving HHS at the same time. The Department's witness testified that the relevant data run shows an admission date of [REDACTED] 2022 and a discharge date of [REDACTED] 2022 for Petitioner at [REDACTED] Hospital. The Department's witness testified that he reviewed the warrant paid to Petitioner and her provider for [REDACTED] 2022 to ensure that the payments were actually received and cashed by Petitioner and her provider.

Petitioner's daughter/provider testified that she took her mother to the emergency room on [REDACTED] 2022 and were there for two days before Petitioner was admitted and transferred to a room. Petitioner's daughter/provider testified that she should receive this payment because she was doing everything for her mother during this time. Petitioner's daughter/provider indicated that she did everything she did for her mother at

home and then some as the hospital staff were not helping her. Petitioner's daughter/provider testified that she slept in the hospital the whole time and had to help her mother communicate because she does not speak English. Petitioner's daughter/provider disputed that Petitioner was admitted to the hospital for four days because they spent two days in the emergency department.

The above cited policy specifically indicates that HHS cannot be paid when services are "provided by another resource at the same time (for example, hospitalization, MI-Choice Waiver)." Policy also provides that the "provider and/or client is responsible for notifying the adult services specialist within 10 business days if the client is hospitalized." Finally, policy indicates that the provider must repay the State of Michigan for services they did not provide.

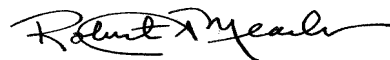
Here, [REDACTED] Hospital notified the Department that Petitioner was hospitalized from [REDACTED] 2022 to [REDACTED] 2022. As such, the Department was required to recoup HHS payments for [REDACTED] 2022 through [REDACTED] 2022 (no recoupment on the date of discharge) even if Petitioner's daughter/caregiver was still helping Petitioner while she was in the hospital. The point of the recoupment is that Medicaid cannot pay two entities at the same time to care for a beneficiary. Here, the hospital was being paid to care for Petitioner from the time she entered the emergency department until the time she was discharged. Petitioner's daughter/provider cannot be paid for caring for her mother at the same time and this care must be considered voluntary in nature. In other words, if Petitioner's daughter/provider did not stay and assist Petitioner in the hospital, the hospital would have cared for Petitioner. While the undersigned is sympathetic to Petitioner's daughter's arguments, the policy is clear, and the undersigned has no authority to ignore it.

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly sought recoupment from 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/sr

Robert J. Meade
Administrative Law Judge

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

Via Electronic Mail:

DHHS Department Contact

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

DHHS Department Representative

M. Carrier
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Lansing, MI 48909
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Agency Representative

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Via First Class Mail:

Authorized Hearing Representative

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Petitioner

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