



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: January 31, 2020
MOAHR Docket No.: 19-011515
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 hearing was held on January 30, 2020. [REDACTED] Petitioner's mother, provider and Authorized Hearing Representative, appeared and testified on Petitioner's behalf. Florence Scott-Emuakpor, Appeals Review Officer, appeared on behalf of Respondent, Michigan Department of Health and Human Services (Respondent, MDHHS or Department). Kelly Williams, Adult Services Supervisor, appeared as a witness for the Department.

At the hearing, it was mistakenly noted that this collection matter was against [REDACTED] the Home Help Services (HHS) provider and that the case was coded HHP. In fact, this collection action was against [REDACTED] the recipient of HHS and should be coded HHR. As such, a final Decision and Order will be issued in this case as opposed to a Proposal for Decision.

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. On or about January 19, 2018, Petitioner began receiving HHS. (Exhibit A, p 10; Testimony).
2. Following an investigation by the Department, it was determined that Petitioner's provider was paid for HHS while Petitioner was in the hospital from April 19, 2018 through April 28, 2018. (Exhibit A, pp 6, 14-15, Exhibit

B; Testimony)

3. On August 8, 2019, the Department issued a certified letter to Petitioner informing her that an overpayment for HHS in the amount of [REDACTED] had been made for her care while she was in the hospital or a nursing facility and that the Department was seeking to recover that amount from Petitioner. (Exhibit A, p 6; Testimony).
4. On October 31, 2019, Petitioner's hearing request was received by the Michigan Office of Administrative Hearings and Rules. (Exhibit 1).
5. On November 2, 2019, the Department sent Petitioner a Collection Notice regarding the above overpayment. The Notice included Petitioner's appeal rights. (Exhibit A, p 7; Testimony)

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, 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, 10-01-2019, addresses responsibilities of home help providers:

CAREGIVER INTERVIEW

An initial face-to-face interview must be completed with all Home Help caregiver(s). A face-to-face or phone contact must be made with the caregiver(s) at the six month review to verify services are being furnished. If phone contact was made at the last review, 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-client and provider or face to face-provider under the *contact* tab.

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

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

- 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 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 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.

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 worker as part of the provider enrollment process.

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

The statement of employment does the following:

- Requires the individual caregiver/agency provider to repay the State of Michigan for services he or she did not provide.

Adult Services Manual (ASM) 165, 04-01-2019, addresses the issue of recoupment:

GENERAL POLICY

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 overpayments 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 clients 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.

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 to the department 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.**

Caregivers and Agency Provider Errors

Individual caregiver or agency providers are responsible for correct billing procedures. Individual caregivers and agency providers must bill for hours and services delivered to the client that have been approved by the adult services worker. Individual caregivers and agency providers are responsible for refunding overpayments resulting from an inaccurate submission of hours. Failure to bill correctly or refund an overpayment is an individual caregiver or agency provider error.

Example: Client was hospitalized for several days and the individual caregiver or agency provider failed to report changes in service hours resulting in an overpayment.

Individual Caregiver and agency provider errors can be deemed as intentional or unintentional. If the individual caregiver or agency provider error is determined to be intentional; see ASM 166, Fraud - Intentional Program Violation.

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

The Department's witness testified that an overpayment letter was issued to Petitioner after an investigation determined that Petitioner was paid for HHS while she was in the hospital or nursing facility. 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 April 19, 2018 and a discharge date of April 26, 2018 for Petitioner at Beaumont Hospital. The Department's witness testified that she reviewed checks provided for the dates in question to ensure that the payments were actually received by Petitioner's provider.

Petitioner's provider testified that Petitioner was not in the hospital during the times in question but did receive outpatient physical therapy services through Beaumont

Hospital during this period. Petitioner's provider pointed to an order and prior authorization for physical therapy for Petitioner effective April 19, 2018 and running through August 2018. (Exhibits 1-4).

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 that the provider must repay the State of Michigan for services they did not provide.

Here, while Petitioner's provider claims that Petitioner was never an inpatient at Beaumont Hospital and only received physical therapy through Beaumont during the times in question, the proof provided by Petitioner's provider is insufficient for Petitioner to meet her burden of proof. While Petitioner's provider did provide an authorization for physical therapy that covered the period in question, Petitioner's provider did not provide any proof that Petitioner actually received outpatient physical therapy during those dates. Petitioner's provider insists that the authorization for physical therapy is proof enough that Petitioner was not hospitalized, but the undersigned does not agree. A person can be authorized for physical therapy without actually attending physical therapy. In fact, Petitioner's provider was able to provide very specific billing information for each of Petitioner's physical therapy appointments in May 2018, the month after the hospitalization, but did not provide any such information for the period of April 19, 2018 through April 26, 2018. This fact, plus the fact that Petitioner showed up on the inpatient hospitalization data run for Beaumont Hospital during the dates in question makes it more likely than not that Petitioner was actually hospitalized. As such, Petitioner was paid for services while hospitalized or in a nursing facility, contrary to policy, and must pay back the money.

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/sb

Robert J. Meade
Administrative Law Judge
for Robert Gordon, 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 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
6th Floor
Lansing, MI
48909

DHHS Department Rep.

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Petitioner

[REDACTED]
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