



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 28, 2020  
MOAHR Docket No.: 19-011565  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Jeffrey Kemm**

**DECISION AND ORDER**

Upon the Petitioner's timely hearing request, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 42 CFR 431.200 to 431.250; 42 CFR 438.400 to 438.424, and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held on December 10, 2019, and January 28, 2020, from [REDACTED] Michigan.

Petitioner, [REDACTED] appeared with her case manager, Jennifer Goethals. Respondent, Department of Health and Human Services (Department), had Florence Scott-Emuakpor, Appeals Review Officer, appear as its representative. The Department had two witnesses: [REDACTED] Student Assistant, and Jacob Kwasneski, Investigations Unit Manager. Neither party had any additional witnesses.

One exhibit was admitted into evidence during the hearing. A 41-page packet of documents provided by the Department was admitted collectively as the Department's Exhibit A.

**ISSUE**

Did the Department properly determine that Petitioner was overpaid \$964.28 in Home Help Services (HHS) payments from September 3, 2014, through November 3, 2014?

**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 was a HHS recipient, and her home help provider was [REDACTED]
2. [REDACTED] was incarcerated from September 3, 2014, through November 3, 2014.

3. Petitioner did not notify the Department that her provider was not providing services.
4. The Department continued to issue HHS payments to Petitioner as if Petitioner's provider was not incarcerated and providing services for Petitioner.
5. On October 9, 2014, the Department issued a [REDACTED] payment made payable to Petitioner and [REDACTED] for services provided from September 1, 2014, through September 30, 2014.
6. On October 14, 2014, the October 9 check was deposited or cashed with dual endorsements.
7. On November 6, 2014, the Department issued a [REDACTED] payment made payable to Petitioner and [REDACTED] for services provided from October 1, 2014, through October 31, 2014.
8. On November 10, 2014, the November 6 check was deposited or cashed with dual endorsements.
9. On December 4, 2014, the Department issued a [REDACTED] payment made payable to Petitioner and [REDACTED] for services provided from November 1, 2014, through November 30, 2014.
10. On December 5, 2014, the December 4 check was deposited or cashed with dual endorsements.
11. The Department audited payments made and noticed that it issued payments to [REDACTED] for services provided during dates she was incarcerated.
12. The Department investigated the payments and determined that Petitioner must have deposited or cashed the checks since they were made payable to her and [REDACTED] and they were deposited or cashed while [REDACTED] was incarcerated.
13. The Department determined that Petitioner was overpaid [REDACTED]
14. On November 21, 2019, the Department mailed a letter to Petitioner to notify her that she was overpaid [REDACTED] because she was paid for services provided during a time her provider was incarcerated and could not have provided services.
15. Petitioner requested a hearing to dispute the overpayment.

### **CONCLUSIONS OF LAW**

The Medical Assistance Program (MA) 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 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.

In this case, the Department is alleging that Petitioner was overpaid HHS payments because she was paid for services during a time when her provider was incarcerated. Any payment received for HHS not provided must be returned to the Department. ASM 135 (October 1, 2019), p. 4-5. The Department presented sufficient evidence to establish that Petitioner received payments for HHS not provided.

Petitioner's provider was Virginia Polk. Virginia Polk was incarcerated from September 3, 2014, through November 3, 2014. The Department issued HHS payments made payable to Petitioner and Virginia Polk in the total amount of \$964.28 for services provided from September 3, 2014, through November 3, 2014, and the payments were deposited or cashed. Since Petitioner received payments for services that could not have been provided since her provider was incarcerated, Petitioner was overpaid.

### **DECISION AND ORDER**

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly determined that Petitioner was overpaid [REDACTED] in Home Help Services (HHS) payments from September 3, 2014, through November 3, 2014.

**IT IS ORDERED THAT** the Department's decision is **AFFIRMED**.

JK/dh



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**Jeffrey Kemm**  
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**

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**DHHS Department Rep.**

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**Petitioner**

[REDACTED]  
[REDACTED] MI [REDACTED]