

GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

Date Mailed: March 31, 2020
MOAHR Docket No.: 20-000071
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Colleen Lack

DECISION AND ORDER

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 *et seq*; 42 CFR 438.400 *et seq*; and Mich Admin Code, R 792.11002.

After due notice, a hearing was held on February 20, 2020. [REDACTED], the Petitioner, appeared on her own behalf. Theresa Root, Appeals Review Officer (ARO), represented the Department of Health and Human Services (Department). Roseshundra Brown, Adult Services Worker (ASW), and Margo Peterson, Adult Services Supervisor, appeared as witnesses for the Department.

During the hearing proceeding, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-26.

ISSUE

Did the Department properly pursue recoupment against the Petitioner for overpayments of Home Help Services ("HHS") for the time periods of October 25-30, 2017, and March 8-9, 2018?

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 and HHS client. (Exhibit A, pp. 13-15)
2. Petitioner was hospitalized October 25-30, 2017 and March 5-9, 2018. (Petitioner Testimony)
3. Petitioner and her HHS caregiver notified the Department every time

Petitioner was hospitalized. They would complete the service verification logs together. (Petitioner Testimony)

4. The Department issued warrants for the full monthly HHS payment authorization for October 2017 and March 2018. (Exhibit A, pp. 14-15)
5. On August 1, 2019, the Department sent Petitioner notice that it had determined that an overpayment of \$█ had occurred for the time period of October 25-30, 2017, because the HHS client (Petitioner) was hospitalized. (Exhibit A, p. 5)
6. On August 1, 2019, the Department sent Petitioner notice that it had determined that an overpayment of \$█ had occurred for the time period of March 5-9, 2018, because the HHS client (Petitioner) was hospitalized. (Exhibit A, p. 9)
7. On August 5, 2019, the Department sent Petitioner notice that it had determined that an overpayment of \$█ had occurred for the time period of October 25-30, 2017, because the HHS client (Petitioner) was hospitalized. (Exhibit A, p. 7)
8. On August 5, 2019, the Department sent Petitioner notice that it had determined that an overpayment of \$█ had occurred for the time period of March 5-9, 2018, because the HHS client (Petitioner) was hospitalized. (Exhibit A, p. 11)
9. On December 10, 2019, the Department sent Petitioner a Second Collection Notice stating: their records showed that Petitioner owes the State of Michigan \$█; Petitioner was previously notified of this debt; requesting payment; and stating that it would implement further collection action if it did not hear from Petitioner by December 24, 2019. (Exhibit A, p. 6)
10. On December 10, 2019, the Department sent Petitioner a Second Collection Notice stating: their records showed that Petitioner owes the State of Michigan \$█; Petitioner was previously notified of this debt; requesting payment; and stating that it would implement further collection action if it did not hear from Petitioner by December 24, 2019. (Exhibit A, p. 8)
11. On December 10, 2019, the Department sent Petitioner a Second Collection Notice stating: their records showed that Petitioner owes the State of Michigan \$█; Petitioner was previously notified of this debt; requesting payment; and stating that it would implement further collection action if it did not hear from Petitioner by December 24, 2019. (Exhibit A, p. 10)

12. On December 10, 2019, the Department sent Petitioner a Second Collection Notice stating: their records showed that Petitioner owes the State of Michigan \$█; Petitioner was previously notified of this debt; requesting payment; and stating that it would implement further collection action if it did not hear from Petitioner by December 24, 2019. (Exhibit A, p. 12)
13. On January 8, 2020, the Michigan Office of Administrative Hearings and Rules received Petitioner's request for an administrative hearing. Petitioner included a money order for \$█ with her hearing request. (Hearing Request)
14. It is unclear who indicated on the bottom of the hearing request that the \$█ was for "AR# 2019 0854 547 - \$█" and "AR# 2019 0956 314 - \$█." (Hearing Request)
15. On January 27, 2020, the local Department office sent an email to the Medicaid Collections Unit explaining that an error was made and overpayment letters were sent for the same time periods. The email stated that the recoupments for \$█ and \$█ needed to be rescinded. (Exhibit A, pp. 2 and 16)
16. From the February 13, 2020, payment warrant for Petitioner's HHS case, the Department withheld \$█ for the recoupment. (Petitioner and ARO Testimony)

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.

The HHS policy that was in effect at the time of the overpayment periods stated:

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.

Adult Services Manual (ASM) 101,
August 1, 2016, p. 1.
(Underline added by ALJ)

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).
- Transportation - See Bridges Administrative Manual (BAM) 825 for medical transportation policy and procedures.
- Money management such as power of attorney or representative payee.
- Home delivered meals.
- Adult or child day care.

- Recreational activities. (For example, accompanying and/or transporting to the movies, sporting events etc.)

Note: The above list is not all inclusive.

Adult Services Manual (ASM) 101,
August 1, 2016, p. 5.
(Underline added by ALJ)

- The provider cannot be paid if the client is unavailable; including but not limited to hospitalizations, nursing home or adult foster care (AFC) admissions.

Note: Home help services cannot be paid the day a client is admitted into the hospital, nursing home or AFC home but can be paid the day of discharge.

- The client and/or provider is responsible for notifying the adult services specialist within **10 business days** of any change; including but not limited to hospitalizations, nursing home or adult foster care admissions.
- The client and/or provider is responsible for notifying the adult services specialist within **10 business days** of a change in provider 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 provider.
 - 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.
- The provider must submit an electronic services verification (ESV) monthly to confirm home help services were provided.

Adult Services Manual (ASM) 135,
October 1, 2016, pp. 4-5
(Underline added by ALJ)

The HHS policy regarding overpayment and recoupment process when the recoupment letter was issued states:

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 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 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.
- 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, 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.**

Administrative Errors

An administrative error is caused by incorrect actions by MDHHS.

Computer or Mechanical Process Errors

A computer or mechanical process may fail to generate the correct payment amount to the client, individual caregiver and/or agency provider resulting in an over payment. The adult services worker (ASW) must determine who to initiate recoupment from depending on payment type (dual-party warrant or single-party warrant).

Adult Services Worker (ASW) Errors

An ASW error may lead to an authorization for more services than the client is entitled to receive. The individual caregiver or agency provider delivers, in good faith, the services for which the client was not entitled to. Based on the ASW's error, when this occurs, no recoupment is necessary.

Note: If overpayment occurs and services were **not** provided, recoupment must occur.

Example: If the ASW made an error in MiAIMS while inputting the time for the assessment creating additional hours on the time and task, and the individual caregiver or agency provider worked the approved hours on the time and task, recoupment is **not** needed.

Adult Services Manual (ASM) 165,
April 1, 2019, pp. 1-3

This ALJ must review the proposed action under the Department's policy and has no authority to change or make any exceptions to the policy. Pursuant to the above cited ASM policy, HHS payments should not have been authorized during the hospitalization because the services were to be provided by another resource during that time period.

In this case, there was no dispute regarding the hospitalization dates, October 25-30, 2017 and March 5-9, 2018. Petitioner and her HHS caregiver notified the Department every time Petitioner was hospitalized. They would complete the service verification logs together. (Petitioner Testimony) Accordingly, the overpayment would be an administrative error if the full monthly HHS payments were issued despite the hospitalization being reported to the Department. However, recoupment must occur because the HHS services could not have been provided while Petitioner was hospitalized.

The Department acknowledged the error with issuing duplicate overpayment letters and collection notices for the two hospitalization periods and rescinded two of the four recoupment actions. (Exhibit A, pp. 2 and 16)

The Department agreed that adjustments to the remaining recoupment actions would need to be made if the ASM policy at the time of the dates of service allowed for HHS payment to be made on the day of a hospital discharge. (ARO and Adult Services Supervisor Testimony) In this case, the ASM policy in effect at that time of the dates of service did allow for HHS payments for the day of discharge from a hospitalization. It appears that provision of ASM 135 was changed effective July 1, 2018. Adult Services Manual (ASM) 135, July 1, 2018, p. 4. Accordingly, the overpayment periods and amounts need to be adjusted.

The calculations for the revised overpayment periods and amounts were discussed with the parties during the hearing. Overpayments should be calculated by dividing the monthly HHS payment net amount by the number of days in the month, then multiplying by the number of days of overpayment. (See Adult Services Manual (ASM) 165, April 1, 2019, p. 5.) Based on the ASM 135 policy that was in effect at the time of the dates of service, the HHS payments issued for the day of discharge from the hospital were not overpayments. Therefore, the overpayment periods should be adjusted to October 25-

29, 2017, and March 5-8, 2018. The overpayment amount for the October 25-29, 2017, time period would be \$ [REDACTED] (\$ [REDACTED] net HHS payment divided by 31 days in October 2017 then multiplied by 5 days of overpayment= \$ [REDACTED]). (See Exhibit A, p. 14) The overpayment amount for the March 5-8, 2018, time period would be \$ [REDACTED] (\$ [REDACTED] net HHS payment divided by 31 days in March 2018 then multiplied by 4 days of overpayment= \$ [REDACTED]) (See Exhibit A, p. 15)

The Department was in agreement with the revised overpayment amounts of \$ [REDACTED] and \$ [REDACTED]. Accordingly, the total overpayment for both overpayment periods is \$ [REDACTED]. Based on the \$ [REDACTED] money order sent with the hearing request, and the withholding of an additional \$ [REDACTED] from the February 13, 2020, payment warrant, it appears that the Department has collected \$ [REDACTED] total for the two remaining recoupment actions. Therefore, Petitioner would be due a refund of \$ [REDACTED] if the \$ [REDACTED] and \$ [REDACTED] were applied to any of the four original recoupment actions as two of the recoupment actions have been rescinded and the overpayment amounts for the remaining two need to be adjusted.

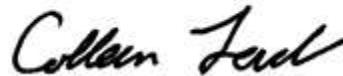
Given the record in this case and the Department's policies, the undersigned Administrative Law Judge finds that the Department properly seeks recoupment from Petitioner, the HHS client, because HHS payments were issued for periods she was hospitalized, however, the overpayment periods and amounts must be adjusted to \$ [REDACTED] for the October 25-29, 2017, time period and \$ [REDACTED] for the March 5-8, 2018, time period. The Department will need to review how the \$ [REDACTED] payment and any withheld HHS payments were applied to the recoupment actions at issue in this case.

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, but for revised overpayment periods and amounts of \$ [REDACTED] for the October 25-29, 2017, time period and \$ [REDACTED] for the March 5-8, 2018, time period.

IT IS, THEREFORE, ORDERED that:

The Department's decision is **AFFIRMED** with the adjusted overpayment periods and amounts. The Department will need to review how the \$ [REDACTED] payment and any withheld HHS payments were applied to the recoupment actions at issue in this case.



Colleen Lack
Administrative Law Judge
for Robert Gordon, Director
Department of Health and Human Services

CL/dh

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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