[redacted]
[redacted] MI [redacted]

Date Mailed: May 28, 2020
MOAHR Docket No.: 20-000741
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 March 17, 2020. [redacted] the Petitioner, appeared on his own behalf. John Lambert, Appeals Review Officer (ARO), represented the Department of Health and Human Services (Department). Teresa Collins, Adult Services Worker (ASW), and Kelly Williams, 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. 1-25.

ISSUE

Did the Department properly pursue recoupment against the Petitioner for an overpayment of Home Help Services ("HHS") for the time period of November 1-30, 2017?

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. 10-15)

2. The Department received claims for an inpatient hospitalization for Petitioner at [redacted] Hospital (NPI 1427360700) for [redacted] 2017. (Exhibit A, p. 9)

3. The Department issued a warrant for the full monthly HHS payment

authorization for [redacted] 2017. (Exhibit A, pp. 10 and 12-13)

4. On August 1, 2019, the Department sent Petitioner notice that it had determined that an overpayment of [redacted] had occurred for the time period of [redacted] 2017, because the HHS client (Petitioner) was hospitalized. (Exhibit A, p. 15)

5. Petitioner sought verification of hospitalization dates from the hospital and received an August 13, 2019, certification that their records showed no treatment at the facility ([redacted] Hospital) for the dates of service requested. (Exhibit A, p. 6)

6. On February 3, 2020, the Department sent Petitioner a Second Collection Notice stating: their records showed that Petitioner owes the State of Michigan [redacted] 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 17, 2019. (Exhibit A, p. 16)

7. On February 6, 2020, the Michigan Office of Administrative Hearings and Rules received Petitioner's request for an administrative hearing. (Exhibit A, pp. 4-7)

8. From the February 13, 2020, payment warrant for Petitioner's HHS case, the Department withheld [redacted] for the recoupment. (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

The Department acknowledged the August 1, 2019, letter indicates an incorrect overpayment period, the entire month of [redacted]2017, and an incorrect overpayment amount, [redacted] (Exhibit A, pp. 8 and 15; ARO Testimony) Pursuant to the above cited ASM policy, HHS payments should not be authorized during a hospitalization because

the services are to be provided by another resource during that time period. However, in [redacted] 2017, the policy did allow for HHS payment to be authorized for the date of discharge. Accordingly, if Petitioner was hospitalized [redacted] 2017, the overpayment period would be [redacted] 2017. The Department agreed that this would be the correct overpayment period. (ARO Testimony) It is unclear how the alleged overpayment amount of [redacted] was calculated, but it appears to improperly include the date of discharge in the overpayment period.

In this case, it is also disputed that Petitioner was hospitalized [redacted] 2017. Petitioner took the August 1, 2019, letter from the Department to the hospital to seek verification because he knew he had never been hospitalized for an entire month. (Petitioner Testimony) Petitioner received an August 13, 2019, certification that their records showed no treatment at the facility ([redacted] Hospital) for the dates of service requested. (Exhibit A, p. 6) Rather, it appears that the search of Petitioner's records only showed a hospitalization [redacted] 2018, at [redacted] Hospital, which is presumably part of the same DMC hospital group as [redacted] Hospital. (Exhibit A, p. 5)

The Department's evidence includes a claim history showing the Department received claims for an inpatient hospitalization for Petitioner at [redacted] Hospital (NPI 1427360700) for [redacted] 2017. However, there are three entries for the [redacted] 2017 dates of service. The first shows a claim status of accepted, processing status of edits processed, and an approved amount of $3,056.74. The second shows a claim status of accepted, processing status of edits processed, and an approved amount of -$3,056.74. The third shows a claim status of void, processing status of edits processed, and an approved amount of $3,056.74. (Exhibit A, p. 9) The two claims with the accepted statuses appear to show the provider receiving and returning the same approved amount for these dates of service. It is not clear if the void status on the third claim indicates that the approved amount was actually paid for this claim. If the approved amount for the claim with the void status was not actually paid to the billing provider, it would appear that Petitioner no longer has a paid claim for an inpatient hospitalization for Petitioner at [redacted] Hospital (NPI 1427360700) for [redacted] 2017.

It is also noted that the Department withheld [redacted] for the recoupment from the February 13, 2020, payment warrant for Petitioner's HHS case. (ARO Testimony) However, the February 3, 2020, Second Collection Notice stated further collection actions, such as withholding future payments, would be initiated if they did not hear from Petitioner by February 17, 2020. (Exhibit A, p. 16) Accordingly, the Department failed to allow Petitioner the time period they specified to respond before implementing the collection action.

Given the record in this case and the Department's policy, the undersigned Administrative Law Judge finds that there is insufficient evidence to establish the alleged overpayment amount of [redacted] or to determine an amended overpayment amount. The Department acknowledged errors in the August 1, 2019, letter they issued to Petitioner notifying him of the alleged overpayment, including the listed overpayment

period and overpayment amount. (ARO Testimony) The Department's evidence was not clear regarding whether Petitioner still has a paid claim for an inpatient hospitalization for Petitioner at [redacted] Hospital (NPI 1427360700) for [redacted] 2017. The two claims with the accepted statuses appear to show the provider receiving and returning the same approved amount for these dates of service. It is not clear if the void status on the third claim indicates the approved amount was actually paid. If the approved amount for the claim with the void status was not actually paid to the billing provider, it would appear that Petitioner no longer has a paid claim for an inpatient hospitalization for Petitioner at [redacted] Hospital (NPI 1427360700) for [redacted] 2017. (Exhibit A, p. 9) Further, Petitioner sought verification of the alleged hospitalization dates from the hospital and received an August 13, 2019, certification that their records showed no treatment at the facility ([redacted] Hospital) for the dates of service requested. (Exhibit A, p. 6; Petitioner Testimony) Accordingly, it cannot be found that the Department properly seeks recoupment from Petitioner for the alleged HHS overpayment for a [redacted] 2017 hospitalization based on the available information.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department improperly pursued recoupment against the Petitioner, for [redacted] for an overpayment period of [redacted] 2017.

IT IS, THEREFORE, ORDERED that:

The Department's decision is **REVERSED** and the Department must initiate rescinding the recoupment of [redacted] from Petitioner for the overpayment period of [redacted] 2017.

Colleen Lack

CL/dh

Colleen Lack
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.	M. Carrier Appeals Section PO Box 30807 Lansing, MI 48933
Petitioner	[redacted] [redacted], MI [redacted]
Agency Representative	John Lambert PO Box 30807 Lansing, MI 48909