

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: June 11, 2020
MOAHR Docket No.: 20-001998
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Steven Kibit

DECISION AND ORDER

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 42 CFR 431.200 *et seq.*, and upon the Petitioner's request for a hearing.

After due notice, a telephone hearing was held on June 2, 2020. [REDACTED], Petitioner's Power of Attorney, appeared and testified on Petitioner's behalf. John Lambert, Appeals Review Officer, appeared and testified on behalf of the Respondent Department of Health and Human Services (DHHS Department). Christina Grell, Adult Services Worker, and Laura Harrison, Section Manager, also testified as witnesses for the Department.

During the hearing, the Department submitted an evidence packet that was admitted into the record as Exhibit A, pages 1-30. Petitioner did not submit any proposed exhibits.

ISSUE

Did the Department properly decide to recoup \$48.52 in payments made to Petitioner?

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 previously approved for HHS through the Department. (Exhibit A, pages 16-17).
2. For the month of May of 2018, Petitioner was approved for \$ [REDACTED] of HHS. (Exhibit A, page 15-17).

3. In June of 2018, the Department issued two-party warrants, made out to both Petitioner and her provider, for HHS provided for the entire month of May of 2018. (Exhibit A, page 9; Testimony of ASW).
4. However, the Department subsequently found that Petitioner had been hospitalized, and that the Department had paid for inpatient hospital services for Petitioner, during the dates of May 4, 2018 to May 7, 2018. (Exhibit A, pages 13-14).
5. On August 6, 2019, the Department sent Petitioner written notice that it had determined that an overpayment for HHS had occurred for the time period of May 4, 2018 to May 7, 2018. (Exhibit A, pages 5, 19).
6. The amount of the overpayment was identified as \$ [REDACTED], and it was stated that an overpayment occurred because Petitioner had been hospitalized during the relevant time period. (Exhibit A, pages 5, 19).
7. On February 6, 2020, the Department sent Petitioner a collection notification providing that Petitioner had been previously notified of her debt to the Department and that Department would implement a collection action if it did not hear from Petitioner. (Exhibit A, pages 6, 20).
8. On March 1, 2020, the Department sent Petitioner another collection notification. (Exhibit A, page 21).
9. On March 17, 2020, the Michigan Office of Administrative Hearings and Rules (MOAHR) received the request for hearing filed in this matter with respect to the Department's recoupment action. (Exhibit A, pages 4-12).
10. After the request for hearing was filed, the Department rescinded part of the recoupment because the policy in effect at the time allowed for payment for HHS on the date Petitioner was discharged from the hospital. (Testimony of ASW; Testimony of Department's representative).
11. The Department now seeks to recoup \$ [REDACTED] from Petitioner. (Testimony of ASW; Testimony of Department's representative).

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 statutes, 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.

The applicable policies regarding HHS are set forth in the Department's Adult Services Manuals (ASMs) and, with respect to recipients of HHS being hospitalized, the manuals in effect at the time the payments in dispute in this case started state in part:

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.

*ASM 101 (4-1-18), page 1
(Underline added by ALJ)*

Services not Covered by Home Help Services

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.

*ASM 101 (4-1-18), pages 4-5
(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.

*ASM 135 (10-1-2016), page 3
(Underline added by ALJ)*

Note: When a client is admitted to a hospital or nursing home, the facility is reimbursed for the client's care on the day the client is admitted, but not for the day of discharge. The home help provider cannot be reimbursed for the date

the client is admitted to the facility but may be paid for the day of discharge.

*ASM 150 (1-1-2017), page 4
(Underline added by ALJ)*

Moreover, with respect to overpayments and the recoupment process, the applicable manual also states in part:

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.

* * *

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 specialist is responsible for notifying the client or provider in writing of the overpayment.

The adult services specialist **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.

Recoupment Letter for Home Help (DHS-566)

When an overpayment occurs in the home help program, the adult services specialist must complete the DHS-566, Recoupment Letter for Home Help, located under the forms module in ASCAP.

ASCAP will solicit all necessary information to complete this letter. The specialist must supply the following:

- Determine if the recoupment is solicited from the client or provider.
- The reason for recoupment.
- Warrant details and service period.
- The exact time period in which the overpayment occurred.
- The amount of the overpayment.

Note: The overpayment amount is the net amount (after the FICA deduction), not the cost of care (gross) amount.

Additional Instructions When Completing DHS-566

Consider the following points when completing the DHS-566:

- If the overpayment occurred over multiple months, the DHS- 566 will reflect the entire amount to be recouped.

Note: A separate DHS-566 is not required to reflect an overpayment for multiple months for the same client.

- Two party warrants issued in the home help program are viewed as client payments. Any overpayment involving a two party warrant must be treated as a client overpayment.

Exception: If the client was deceased or hospitalized and did not endorse the warrant, recoupment must be from the provider.

- Overpayments must be recouped from the provider for single party warrants.
- When there is a fraud referral, do not send a DHS-566 to the client/provider (refer to ASM 166, Fraud - Intentional Program Violation).
- Warrants that have not been cashed are not considered overpayments. These warrants must be returned to Treasury and canceled.

*ASM 165 (8-1-16), pages 1-6
(Underline added by ALJ)*

Here, the Department seeks to recoup \$ [REDACTED] in alleged overpayments for HHS made to Petitioner as part of a payment for HHS during the month of May of 2018.

In support of that decision, the ASW testified that, following a review of paid inpatient hospital claims, the Department determined that it had improperly paid for HHS for Petitioner on days in which Petitioner was hospitalized. The ASW also testified that she subsequently initiated a recoupment action, with the action subsequently amended to the recoupment of \$ [REDACTED] after it was determined that the policy at the time allowed for the payment of HHS on the date Petitioner was discharged from the hospital. She further testified that, per policy, the overpayment must be treated as a client overpayment and recouped from Petitioner because the warrant was issued as a two-party warrant to both Petitioner and her provider.

In response, Petitioner's representative testified that she does not dispute that an overpayment occurred or the amount of the overpayment the Department is seeking to recoup. However, she does dispute the Department deciding to recoup the overpayment from Petitioner rather than the home help provider, as the provider is the one who received the money. Petitioner's representative further testified that she does not know if Petitioner signed the warrants issued by the Department, but that she assumes Petitioner did.

Given the record in this case, the undersigned Administrative Law Judge finds that the Department properly seeks recoupment of \$ [REDACTED] in payments made to Petitioner for HHS during times when Petitioner was hospitalized.

The above cited policies specifically provide that HHS are furnished to "individuals who are not currently residing in a hospital" and that HHS cannot be paid if the beneficiary is unavailable due to a hospitalization, except for the day of discharge.

Here, the Department credibly established through its evidence, which Petitioner does not dispute, that, while Petitioner was hospitalized during the time period of May 4, 2018 to May 7, 2018, the Department paid for HHS for the entire month of May of 2018

without any notification from Petitioner or her provider regarding the hospitalization.

Accordingly, payments for HHS should not have been authorized to Petitioner while she was hospitalized, excluding the date of discharge, and, as such a payment did occur in this case, it was an overpayment caused by an unintentional client and provider error and it must be recouped. Moreover, because the overpayment at issue was a two party warrant sent to Petitioner and her provider, with no evidence suggesting that Petitioner did not endorse the warrant, the Department was required by policy to treat the overpayment as a client overpayment and recoup the amount from Petitioner.

DECISION AND ORDER

The Administrative Law Judge, based on the above findings of fact and conclusions of law, decides that the Department properly decided to recoup \$ [REDACTED] in payments made to Petitioner.

IT IS THEREFORE ORDERED that:

The Department's decision is **AFFIRMED**.

SK/sb

Steven Kibit

Steven Kibit
Administrative Law Judge
for Nick Lyon, 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

Authorized Hearing Rep.

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

Agency Representative

John Lambert
PO Box 30807
Lansing, MI
48909

Petitioner

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