[redacted]
[redacted], MI [redacted]

Date Mailed: June 9, 2020
MOAHR Docket No.: 20-002006
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 May 28, 2020. Petitioner, [redacted] appeared and testified on his own behalf. Allison Pool, Appeals Review Officer, appeared on behalf of Respondent, Michigan Department of Health and Human Services (Respondent, MDHHS or Department). Gretchen Walters, Investigative Analyst, Office of Inspector General (OIG); Wynikka Bass, Adult Services Worker; and Kelly Williams, Adult Services Supervisor, appeared as witnesses for the Department.

ISSUE

Did the Department properly pursue recoupment against Petitioner for an overpayment of Home Help Services (HHS) for periods when Petitioner's provider was incarcerated?

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 has been receiving HHS since at least 2011. Petitioner's HHS provider at all time relevant to this case was [redacted]. (Exhibit A, p 19; Testimony).

2. Following an investigation by the Department, it was determined that Petitioner's provider was incarcerated from August 27, 2014 through January 27, 2015. Neither Petitioner nor his provider notified the Department of Petitioner's incarceration. As such, the Department continued to issue payments for HHS to Petitioner and his provider for HHS during this period and those checks were cashed. (Exhibit A, pp 18, 21-28, Testimony)

3. On February 28, 2020, the Department issued a certified letter to Petitioner informing him that an overpayment for HHS in the amount of $[redacted] had been made for Petitioner's care while Petitioner's provider was incarcerated and that the Department was seeking to recover that amount from Petitioner. (Exhibit A, pp 9-11; Testimony).

4. On March 18, 2020, Petitioner's hearing request was received by the Michigan Office of Administrative Hearings and Rules. (Exhibit A, p 13).

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 and his provider were paid for HHS while Petitioner's provider was incarcerated. The Department's witness indicated that MDHHS conducts a data run for all HHS recipients and providers to ensure the integrity of the HHS system. The Department's witness testified that the data run uncovered records from the Wayne County Jail that show that Petitioner's provider was incarcerated from August 27, 2014 through January 27, 2015. The Department's witness testified that checks were issued in the name of both Petitioner and the provider and that some of the checks during the Provider's incarceration were signed by Petitioner alone while some were purportedly signed by both Petitioner and the provider.

Petitioner testified that he could not quite remember when his provider got locked up, but he did recall that she was incarcerated at some point. Petitioner indicated that he does remember that the checks were made out to both him and the provider, but he could not remember when the incarceration was.

The above cited policy specifically indicates that, "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." Policy also provides, "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." Finally, policy indicates, "When an overpayment is discovered, corrective actions must be taken to prevent further overpayment and to recoup the overpayment amount."

Here, Petitioner and his provider were paid for HHS for a time period when Petitioner's provider was incarcerated. Clearly, Petitioner's provider would not be able to provide HHS to Petitioner while incarcerated in the Wayne County Jail. Neither Petitioner nor his provider notified the Department of Petitioner's provider's incarceration or the fact that services were no longer being provided, as required by policy. Given that Petitioner's provider was incarcerated, it is reasonable to assume that it was Petitioner who cashed the HHS checks, so it makes sense to recoup the overpayment from Petitioner. Petitioner offered no defense to the claim against him besides to say that he could not remember when his provider was incarcerated. Therefore, 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/

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.	M. Carrier Appeals Section PO Box 30807 Lansing, MI 48933
Agency Representative	Allison Pool 222 N Washington Square Suite 100 Lansing , MI 48933
Petitioner	[redacted] [redacted], MI [redacted]