

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: August 14, 2020
MOAHR Docket No.: 20-002685
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 July 14, 2020. [REDACTED], the Petitioner, appeared on her own behalf. Florence Scott-Emuakpor, Appeals Review Officer (ARO), represented the Department of Health and Human Services (Department). Raeanna Kidd, Adult Services Worker (ASW), and Cam Crowell, Manager of Collections, appeared as witnesses for the Department.

During the hearing proceeding, the Department's Hearing Summary packet was admitted as Exhibit A, pp. 1-21; the Department's Addendum packet was admitted as Exhibit B, pp. 1-6. The record was left open for the Department to provide documentation of the time and task authorization as well as the services verification logs, which have been received and are admitted as Exhibit C, pp. 1-4.

ISSUE

Did the Department properly pursue recoupment against the Petitioner for an overpayment of Home Help Services ("HHS") for the time period of October 18-20, 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, p. 9)
2. The Department received claims for an inpatient hospitalization for

Petitioner from October 18, 2018, through October 20, 2018. (Exhibit A, p. 8)

3. On November 9, 2018, the Department issued a warrant for the full monthly HHS payment amount for October 2018. (Exhibit A, pp. 7 and 11)
4. On January 3, 2020, the Department sent Petitioner notice that it had determined an overpayment of \$█████ had occurred for the time period of October 18-20, 2018, because the HHS client (Petitioner) was hospitalized. (Exhibit A, p. 7)
5. On April 9, 2020, 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 April 23, 2020. (Exhibit B, p. 5)
6. On April 28, 2020, the Michigan Office of Administrative Hearings and Rules received Petitioner's request for an administrative hearing. (Exhibit A, p. 6)
7. On June 2, 2020, the Department sent Petitioner a Final Collection Notice stating: their records showed that Petitioner owes the State of Michigan \$52.11; 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 June 16, 2020. (Exhibit B, p.6)

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 home help 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,
April 1, 2018, 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,
April 1, 2018, pp. 4-5.
(Underline added by ALJ)

- The caregiver 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 or day of discharge from the hospital, nursing home, or AFC home.

- The client and/or 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 caregiver is responsible for notifying the ASW within **10 business days** of a change in 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.
- The caregiver must submit an electronic services verification (ESV) monthly to confirm home help services were provided.

Exception: Individuals who are unable to submit a service verification electronically must submit a paper service verification (PSV) form monthly.

- Home help warrants are issued as dual party and mailed to the client's address.

Exception: There are circumstances where payment to the caregiver only is appropriate, for example, client is physically or mentally unable to endorse the warrant. Authorizations to home help agency providers are payable to the provider only.

Adult Services Manual (ASM) 135,
July 1, 2018, 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.

DHS-566, Recoupment Letter for Home Help

When an overpayment occurs in the Home Help program, the adult services worker **must** complete the DHS-566, Recoupment Letter for Home Help, located under the forms module in MiAIMS.

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

- Determine if the recoupment is solicited from the client, individual caregiver, or agency 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 need to be completed on multiple recoupment letters as MiAIMS only allows one warrant payment at a time. 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 individual caregiver.

Adult Services Manual (ASM) 165,
April 1, 2019, pp. 1-6

The Department received claims for an inpatient hospitalization for Petitioner from October 18, 2018, through October 20, 2018. (Exhibit A, p. 8) On November 9, 2018, the Department issued a warrant for the full monthly HHS payment amount for October 2018. (Exhibit A, pp. 7 and 11) Accordingly, the Department determined that an overpayment of \$ [REDACTED] had occurred for the time period of October 18-20, 2018, because the HHS client (Petitioner) was hospitalized. (Exhibit A, p. 7; Exhibit B, pp. 5-6; ASW Testimony; Manager of Collections Testimony)

Petitioner testified that on October 18, 2018, she called the ASW from the hospital and left a message, like she always has to, notifying the ASW that she was in the hospital. Petitioner also noted that the HHS caregiver was not supposed to work the days of the hospitalization because she was already taking her son somewhere. Petitioner stated that the Caregiver worked other days instead. Petitioner indicated the HHS caregiver went down to the Department to fill out the services verification, so Petitioner does not know what was submitted. That individual is no longer Petitioner's HHS caregiver. (Petitioner Testimony)

The time and task authorization shows that the only service authorized for 7 days per week was meal preparation. Transferring, mobility, grooming, dressing, bathing, housework, and medication were authorized for 5 days per week. Laundry and shopping were authorized for 2 days per week. (Exhibit C, p. 1) The services verification logs are marked that transferring, mobility, grooming, dressing, bathing, housework, meal preparation, and medication assistance were provided on October 18, 2018 and October 19, 2018. For October 20, 2018, only meal preparation was marked. (Exhibit C, pp. 2-4)

The alleged overpayment appears to have been calculated by dividing the net payment amount for the month by the number of days in the month, then multiplying by the number of days of the overpayment period. (\$ [REDACTED] per month ÷ 31 days = \$ [REDACTED] per day. \$ [REDACTED] per day x 3 days = \$ [REDACTED]) However, because all of the authorized services for Petitioner were not provided every day of the overpayment period, the alleged overpayment amount may not be accurate.

Based on the time and task authorization as well as the services verification logs that were submitted, the HHS payment that was issued included 134 minutes of HHS each day for October 18, 2018, and October 19, 2018 (18 minutes for bathing + 16 minutes for dressing + 10 minutes for grooming + 16 minutes for mobility + 8 minutes for transferring + 12 minutes for housework + 4 minutes for medication + 50 minutes for

meal preparation = 134 minutes); and 50 minutes of HHS for October 20, 2018 (50 minutes for meal preparation only). (Exhibit C, pp. 1-4) This is a total of 318 minutes of HHS during the overpayment period (134 minutes + 134 minutes + 50 minutes = 318 minutes) which equates to 5.3 hours of HHS (318 minutes ÷ 60 minutes per hour = 5.3 hours).

The HHS pay rate was \$ [REDACTED] per hour, the gross monthly care cost was \$ [REDACTED], and the FICA amount was \$ [REDACTED]. (Exhibit A, p. 11) Accordingly, the gross care cost for the overpayment period was \$ [REDACTED] (5.3 hours x \$ [REDACTED] per hour = \$ [REDACTED]). This was 8.4029% of the monthly gross care cost (\$ [REDACTED] ÷ \$ [REDACTED] = 0.084029). The corresponding proportion of the FICA amount for the overpayment period is \$ [REDACTED] (\$ [REDACTED] x 8.4029% = \$ [REDACTED]). Therefore, it appears that the correct overpayment amount for this overpayment period is \$ [REDACTED] (\$ [REDACTED] gross care cost - \$ [REDACTED] FICA = \$ [REDACTED]).

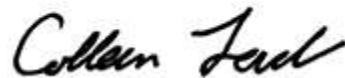
Given the record in this case and the Department's policy, the undersigned Administrative Law Judge finds that there is sufficient evidence to establish an overpayment occurred, but with a corrected amount of \$ [REDACTED]. Petitioner did not dispute that she was hospitalized October 18-20, 2018. The Department issued a warrant for the full monthly HHS payment amount for October 2018. Pursuant to the above cited ASM 135 and 165 policies, HHS payment warrants are issued as dual-party warrants and are treated as a client overpayment. There was no evidence that an exception had been granted and the HHS payment warrant was issued only to the caregiver. Therefore, the Department properly seeks recoupment from Petitioner for the HHS overpayment for an October 18-20, 2018, hospitalization, but with a corrected overpayment amount of \$ [REDACTED], 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 properly pursued recoupment against the Petitioner, for an overpayment period of October 18-20, 2018, with a corrected overpayment amount of \$ [REDACTED].

IT IS, THEREFORE, ORDERED that:

The Department's decision is **AFFIRMED** with the corrected overpayment amount of \$ [REDACTED].



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

Michelle Martin
Capitol Commons
6th Floor
Lansing, MI 48909

DHHS Department Rep.

M. Carrier
Appeals Section
PO Box 30807
Lansing, MI 48933

Agency Representative

Florence Scott-Emuakpor
222 N. Washington Square
Suite 100
Lansing, MI 48933

Petitioner

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