



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: May 10, 2023
MOAHR Docket No.: 23-001825
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 telephone hearing was held on May 4, 2023. [REDACTED] Attorney, appeared on Petitioner's behalf. [REDACTED] Petitioner's aunt, appeared as a witness. [REDACTED] Petitioner, appeared but did not testify.

Erin E. Harrington, Assistant Attorney General, appeared on behalf of Respondent, Michigan Department of Health and Human Services (Respondent, MDHHS or Department). Mandy Block, Fraud Investigator, Office of Inspector General (OIG) and Michelle Popowich, Manager, OIG, appeared as witnesses for the Department.

ISSUE

Did the Department properly pursue recoupment against Petitioner for an overpayment of Home Help Services (HHS) not rendered to Petitioner from September 14, 2021 to November 30, 2022 in the amount of [REDACTED]?

FINDINGS OF FACT

The Administrative Law Judge, based upon the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On December 21, 2022, MDHHS OIG received a complaint from an Oakland County Adult Services Worker (ASW) regarding Petitioner. (Exhibit A, p 2; Testimony).
2. On February 9, 2023, an OIG investigator interviewed the ASW, who explained that one of Petitioner's listed HHS providers was alleging that she never worked as an HHS provider for Petitioner, and that Petitioner must have stolen her identity to fraudulently receive HHS. (Exhibit A, p 2; Exhibit B, pp 72-73; Testimony)

3. On March 3, 2023, the OIG investigator interviewed a detective at [REDACTED] Township Police Department, who indicated that Petitioner confessed to her that he forged false home help provider documents claiming to be disabled, and used the stolen identities of two women to set up all the paperwork to be paid for HHS that was never rendered. (Exhibit A, p 2; Exhibit B, p 73; Testimony). The investigator also indicated that she was wearing a body camera when Petitioner made his confession. (Exhibit A, p 2; Exhibit B, p 73; Testimony)
4. On March 7, 2023, the OIG investigator interviewed Petitioner, who admitted that his aunt, [REDACTED] forged the providers' signatures on the HHS checks. (Exhibit A, pp 2-3; Exhibit B, p, 71; Testimony)
5. The telephone number listed in CHAMPS for Petitioner's two purported HHS providers belongs to Petitioner's aunt, [REDACTED]. (Exhibit B, pp 71-72; Testimony)
6. One of Petitioner's purported HHS providers was hospitalized on dates when she purportedly provided HHS to Petitioner – April 11, 2022 to April 12, 2022 and June 20, 2022 to June 24, 2022. (Testimony)
7. On March 13, 2023 the OIG investigator received and reviewed the body camera footage referenced above, which confirmed Petitioner's confession. (Exhibit A, p 3; Exhibit B, p 73; Exhibit D; Testimony)
8. OIG compared the signatures of the two purported HHS providers on Petitioner's HHS checks with other signatures of the individuals on file with the State of Michigan (e.g., driver's licenses, etc.) and determined that the signatures did not share any general characteristics. (Exhibit A, pp 24-53, Exhibit C, pp 74-84; Testimony)
9. Based on the above, OIG determined that Petitioner was overpaid HHS in the amount of [REDACTED] for HHS not rendered between September 14, 2021 to November 30, 2022. (Exhibit A, p 23; Testimony)
10. On March 20, 2023, OIG sent Petitioner a Home Help Recoupment letter, seeking to recoup [REDACTED] for HHS not rendered between September 14, 2021 to November 30, 2022. (Exhibit A, pp 5-7; Testimony)
11. On March 30, 2023, Petitioner's hearing request was received by the Michigan Office of Administrative Hearings and Rules. (Exhibit A, pp 9-18).

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.

Adult Services Manual (ASM) 135, 04-01-2022, addresses responsibilities of home help providers:

CAREGIVER INTERVIEW

The ASW must complete an initial face-to-face interview with all Home Help caregiver(s). The ASW must make a face-to-face or phone contact with the caregiver(s) at the six-month review to verify receipt of services. If the last review was a phone contact, 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-provider' as the contact type

and indicating that the contact is an SOP contact, under the Contacts module.

The caregiver must present a picture identification (ID) card that includes his/her name for verification. The picture ID may include driver's license/state ID, passport, or employee ID. Expired IDs are acceptable if the adult services worker can verify identity.

Explain the following points to the client and the caregiver(s) during the initial interview:

- Home Help services are a benefit to the client and earnings to the caregiver.
- The client employs the individual caregiver, not the State of Michigan.
- As the employer, the client has the right to hire and fire the caregiver.
- The caregiver must be enrolled in the Community Health Automated Medicaid Processing System (CHAMPS) and undergo a criminal history screen. The screening must be completed and passed before a provider can be paid to provide Home Help services.
- The caregiver must keep their contact information up to date in CHAMPS; see caregiver address changes in this item.
- Medicaid funds the Home Help program and will not authorize payments if the client's Medicaid eligibility is inactive.
- A caregiver who receives public assistance must report all income received as a Home Help caregiver to their family independence specialist (FIS) or eligibility specialist (ES).
- Do not pay the caregiver if the client is unavailable due to hospitalizations, placement in a nursing home, institution for mental disease, home for the aged (HFA), adult foster care (AFC) or incarceration.
 - Do not pay for Home Help services on the day a client is admitted to a hospital, nursing home, institution for mental disease, HFA, AFC, or incarceration.
 - Home Help services can be paid on the date of discharge from a hospital (effective 02/25/2020).
 - Home Help services can be paid on the date of discharge from a nursing home, institution for mental disease, HFA, AFC placement, or incarceration (effective 9/01/2021).

- Do not pay for Home Help services if the caregiver is incarcerated.
- 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 the 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/agency 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 individual caregiver must submit an electronic services verification (ESV) monthly to confirm Home Help services were provided.

Exception: Individual caregivers 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 a single-party warrant to the individual caregiver only is appropriate, for example, the client is physically or cognitively unable to endorse the warrant. Authorizations to Home Help agency providers are payable to the provider only (single-party).

- Report all earned income to the IRS; see www.irs.gov.
- No federal, state, or city income taxes are withheld from the warrant.

- Social Security and Medicare tax (FICA) are withheld from individual caregiver Home Help warrants.
- Parents who are caring for an adult child do not have FICA withheld.
- Note: Parents who wish to have FICA withheld must be assigned in MiAIMS as 'other relative' in the provider assignment screen.
- All individual caregivers will receive a W-2. • Agency providers will receive a 1099.
- The client and individual caregiver and/or agency provider must sign the MSA-4676, Home Help Services Agreement, before authorizing payment.

Emphasis added

Adult Services Manual (ASM) 165, 04-01-2022, addresses the issue of recoupment:

OVERVIEW

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.

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 worker is responsible for notifying the client, individual caregiver, or agency provider in writing of the overpayment.

The adult services worker 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.

DHS-566, Recoupment Letter for Home Help

When an overpayment occurs in the Home Help program, the ASW must complete the DHS-566, Recoupment Letter for Home Help, located in the Forms module in MiAIMS.

MiAIMS will generate 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.

The overpayment amount is determined by totaling the time associated for each of the tasks not provided. The recoupment is based on the gross amount of payment. If FICA was deducted from the original warrant, it must be deducted from the recoupment. FICA is calculated by multiplying the gross amount of the recoupment by 7.65 percent.

Note: Recoupments for services provided prior to April 1, 2022, should follow the previous recoupment process unless the client or caregiver provided additional information to justify a different calculation for the recoupment. Example: Client receives personal care services two days a week and was home on both days to receive services.

Consider the following points when completing the DHS-566:

- If the overpayment occurs over multiple months and/or multiple warrants, the ASW may complete one DHS-566 to reflect the entire amount to be recouped. MiAIMS allows multiple warrants per recoupment action with a maximum of five warrants per DHS-566.
- Dual-party warrants issued in the Home Help program are viewed as client payments. Any overpayment involving a dual-party warrant must be treated as a client overpayment.

Exception: If the client did not endorse the warrant, recoupment must be from the individual caregiver. This may occur if the client is deceased, hospitalized, nursing home admittance, or incarceration. This list is not inclusive.

- Overpayments must be recouped from the individual caregiver or agency provider for single party warrants.
- When there is a fraud referral, do not send a DHS-566 to the client, individual caregiver, or agency provider; see ASM 166, Fraud-Intentional Program Violation.

- Warrants that have not been cashed are not considered overpayments. These warrants must be returned to Treasury and cancelled.

Distribution of the DHS-566

Upon completion of the DHS-566, Recoupment Letter, in MiAIMS, once print has been selected, a copy of the DHS-566 is electronically forwarded to the MDHHS Medicaid Collections Unit mailbox at MDHHS-Collections-Unit@michigan.gov.

The ASW sends two copies to the individual who owes the money. One copy is for their records and one copy is to return to MDHHS Medicaid Collections Unit along with a check or money order for the overpayment amount.

An electronic version of the DHS-566, Recoupment Letter, is stored in MiAIMS under the Contacts module.

Emphasis added

The OIG Investigator reviewed the evidence in Exhibits A through D, as outlined in the above Findings of Fact, and indicated that the Department sought to recoup [REDACTED] from Petitioner for HHS not rendered between September 14, 2021 to November 30, 2022.

Petitioner's aunt testified that she never signed Petitioner's HHS checks and never took them to a liquor store to cash.

The above cited policy indicates, "Any payment received for Home Help services not provided must be returned to the State of Michigan." Policy also indicates, "If the individual/agency named on the warrant does not provide services or provides services for only a portion of the authorized period, the warrant must be returned." Further, policy indicates, "Dual-party warrants issued in the Home Help program are viewed as client payments. Any overpayment involving a dual-party warrant must be treated as a client overpayment." Finally, policy indicates, "Accepting payment for services not rendered is fraudulent and could result in criminal charges."

Here, the evidence clearly demonstrates that Petitioner received payment for HHS not provided. First, Petitioner admitted to a police detective that he and his aunt fraudulently received HHS payments, and this admission was recorded and confirmed by OIG. One of Petitioner's purported HHS providers informed an ASW and an OIG investigator that she never provided HHS to Petitioner. The signatures for both of Petitioner's purported HHS providers do not match their signatures from other government documents. Petitioner admitted to the OIG investigator that his aunt signed for the providers on the HHS checks. The telephone numbers listed in CHAMPS for the two purported HHS providers belongs to Petitioner's aunt, [REDACTED] Finally, one of Petitioner's purported HHS providers was hospitalized on dates when she purportedly

provided HHS to Petitioner: April 11, 2022 to April 12, 2022 and June 20, 2022 to June 24, 2022, so she could not have provided HHS to Petitioner on those dates.

The only evidence Petitioner offered to rebut the Department's findings was the brief testimony from his aunt, [REDACTED] and two Affidavits attached to his request for hearing. One of the Affidavits was from Petitioner himself, and Petitioner chose not to testify at the hearing or subject himself to cross-examination, so his Affidavit carries very little weight. The second Affidavit was from one of the purported HHS providers, however this provider also did not testify at the hearing, which seems odd given that she was willing to sign an Affidavit in front of a Notary Public. As such, this Affidavit also carries little weight.

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] for HHS not rendered between September 14, 2021 to November 30, 2022.

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/sj

Robert J. Meade
Administrative Law Judge

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 Administrative Hearings and Rules.

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

PROOF OF SERVICE

I certify that I served a copy of the foregoing document upon all parties and/or attorneys, to their last-known addresses in the manner specified below, this 10th day of May 2023.

S. James

S. James
**Michigan Office of Administrative
Hearings and Rules**

Via Electronic Mail:

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