

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF: [REDACTED],
Respondent

Reg. No: 2008-2198
Issue No: 2000
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
September 23, 2009
Luce County DHS

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

HEARING DECISION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37, 7 CFR 273.16, MAC R 400.3130, and MAC R 400.3178 upon the Department of Human Services' request for a disqualification hearing. After due notice, a telephone hearing was held on September 23, 2009. Respondent did not appear at the hearing and it was held in respondent's absence pursuant to 7 CFR 273.16(e), MAC R 400.3130(5), or MAC R 400.3187(5).

ISSUE

Did the respondent commit an Intentional Program Violation (IPV) and did the respondent receive an overissuance of benefits that the department is entitled to recoup?

FINDINGS OF FACT

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

- 1) Respondent was a recipient of MA benefits during the period of June 1, 2005 through November 30, 2005.

- 2) On March 23, 2005, respondent completed a DHS-1171, Application for Assistance, in which he stated that he was not employed, and did not receive any income.
- 3) On May 5, 2005, respondent returned to work at [REDACTED] at an hourly rate of \$21.
- 4) On October 13, 2005, respondent began to work for [REDACTED], at an hourly rate of \$21.
- 5) Respondent received MA benefits during this time, during which the Department paid roughly \$189 per month in premiums.
- 6) In January, 2006, it was discovered that respondent had been working, and had unreported income since his initial application.
- 7) On September 25, 2007, the Department's Office of Inspector General (OIG) filed a hearing request to establish an overissuance of benefits received by respondent as a result of respondent having committed an Intentional Program Violation (IPV); the OIG also requested that respondent be disqualified from receiving program benefits.
- 8) A Notice of Disqualification Hearing was mailed to respondent at the last known address and was not returned by the U.S. Post Office as undeliverable. Respondent's last known address is: [REDACTED].
- 9) OIG Agent Ed Barnes represented the Department at the hearing; respondent did not appear.
- 10) This is respondent's first alleged IPV.

CONCLUSIONS OF LAW

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act and is implemented by Title 42 of the Code of Federal Regulations (CFR). The Department of Human Services (DHS or department) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105. Department policies are found in the Program Administrative Manual (PAM), the Program Eligibility Manual (PEM) and the Program Reference Manual (PRM).

In this case, the department has requested a disqualification hearing to establish an overissuance of benefits as a result of an IPV and the department has asked that respondent be disqualified from receiving benefits. The department's manuals provide the following relevant policy statements and instructions for department caseworkers:

Suspected IPV means an OI exists for which all three of the following conditions exist:

- . The client **intentionally** failed to report information **or intentionally** gave incomplete or inaccurate information needed to make a correct benefit determination, **and**
- . The client was clearly and correctly instructed regarding his or her reporting responsibilities, **and**
- . The client has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill their reporting responsibilities.

Intentional Program Violation (IPV) is suspected when there is clear and convincing evidence that the client or CDC provider has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. PAM, Item 720, p. 1.

Therefore, the undersigned may only find an IPV if there is clear and convincing evidence that the respondent intentionally made a false or misleading statement, or withheld information, **for the purpose of defrauding the Department**, with regard to the MA program.

In this case, the Department has established that respondent was probably aware of the responsibility to report all income and employment to the department. Respondent has no apparent physical or mental impairment that limits the understanding or ability to fulfill the reporting responsibilities. However, the undersigned is not convinced that the Department has met its burden of proof in providing clear and convincing evidence that the respondent intended to defraud the Department with regard to his MA eligibility.

The burden of proof that the Department must meet in order to prove Intentional Program Violation is very high. It is not enough to prove that the respondent was aware of the requirements to report at some point, nor is it enough to prove that the respondent did not report in a timely manner. The Department must prove in a clear and convincing manner, that, not only did the respondent withhold critical information, but that the respondent withheld this information with the intent to increase, maintain, or secure benefits. In other words, the Department must prove that the respondent did not simply forget to meet their obligations to report, but rather, actively sought to defraud the Department.

The Department has not proven that in the current case. Respondent applied for, and received, MA benefits on March 23, 2005. Respondent did not have a change of income for almost 2 months after the application. Respondent's income was discovered in January, 2006.

While the undersigned admits that, given the given the amount of money claimant was making and the length of time involved, it is more likely than not that respondent consciously avoided his obligation to report, it is important to remember that "more likely than not" is an evidentiary threshold below "clear and convincing". Clear and convincing evidence requires

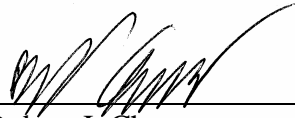
something more, some piece of evidence that clearly elevates respondent's actions from a mere failure to report an income change into something clearly malicious. This does not require evidence that proves maliciousness and intent beyond a reasonable doubt, but something more is required nonetheless. In the current case, all the Department has proven is that respondent did not report. There is no evidence that clearly supports a finding that there was intent to defraud the Department, versus a respondent who, for instance, simply forgot his obligation.

This is not to say that there was no error in this case. The Department has clearly shown, through Exhibit 6 that respondent received \$1134.20 in MA benefits, through State of Michigan paid premiums, which he was not entitled to. The Department may recoup this as client error, and indeed, it would be a miscarriage of justice for them not to do so.

DECISION AND ORDER

The Administrative Law Judge decides the Department has not established that respondent committed an Intentional Program Violation of the MA program. However, the respondent did receive \$1,134.20 in MA benefits he was not eligible for.

The Department is entitled to recoup the overissuance of benefits respondent ineligibly received. Respondent is ORDERED to reimburse the department for the overissuance.



Robert J. Chavez
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: 10/29/09

Date Mailed: 10/30/09

2008-2198/RJC

NOTICE: The law provides that within 30 days of receipt of the above Decision and Order, the respondent may appeal it to the circuit court for the county in which he/she lives.

RJC/dj

cc:

