

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

[REDACTED]

Reg. No: 20082201
Issue No: 2000
Case No: [REDACTED]
Load No: [REDACTED]
Hearing Date:
January 6, 2010
Mackinac 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 February 24, 2010. Respondent appeared at the hearing.

ISSUE

Did the Respondent commit an Intentional Program Violation (IPV) and did the Respondent receive an over-issuance 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 periods of July 1, 2001 through August 31, 2002.
- 2) Respondent filed three DHS-1171 applications, requesting MA benefits, on August 15, 2001, August 6, 2002, and August 22, 2003.
- 3) Respondent reported on the first application that he had never been married.
- 4) Respondent reported on the second application that he was separated.
- 5) Respondent reported on the third application that he had been married on [REDACTED].
- 6) A marriage certificate witnessed by a Mackinac County Magistrate/Clerk showed that Respondent was married on [REDACTED].
- 7) Respondent was aware of the responsibility to report all changes to the Department.
- 8) No evidence was presented as to whether any income was added to the household with regard to the additional group member.
- 9) On July 1, 2009, the Department's Office of Inspector General (OIG) filed a hearing request to establish an over-issuance 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.
- 10) 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]

[REDACTED].

- 11) OIG Agent Edgar Barnes represented the Department at the hearing; Respondent did appear and represented himself pro se.
- 12) 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 over-issuance 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 for the purpose of committing an IPV.

In this case, the Department has established that Respondent was 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. Furthermore, there is clear and convincing evidence that the Respondent intended to mislead the Department.

Respondent told the Department in his August 15, 2001 application for benefits that he was not married. However, a marriage certificate filed in Mackinac County, and witnessed by a county magistrate listed the Respondent's date of marriage as [REDACTED]. Had the Respondent gotten married after he had filed his August, 2001 application and he had not reported the change in group size, the underlying issue would have been merely a failure to report a change, and the Administrative Law Judge would admit that there would be doubts as to whether the Respondent intentionally meant to mislead the Department, or had a simple lapse of memory.

However, Respondent's marriage certificate, as presented by the Department, paints a very different picture. Respondent was married before he filed his application; therefore his application contained obviously false information. Respondent, therefore,

reported false information to the Department; this rises far beyond a memory lapse. It appears that the Respondent actually produced and submitted false information for the Department. For that reason, the undersigned believes that this falsehood was clear and convincing evidence of intent to mislead the Department, which is enough for the undersigned to consider Respondent's actions an intentional program violation. At the hearing, Respondent was unable to offer a credible explanation for the falsehood, though this may have been in part due to the overwhelming amount of time between Respondent's actions and the actual hearing.

However, the prerequisite for an IPV is proof of an actual over-issuance of benefits. After a careful review of the evidence provided by the Department, the Administrative Law Judge finds that the Department has failed to present clear and convincing evidence establishing an actual over-issuance of benefits, and the Department has failed to prove a proper recoupment amount.

First, the Department failed to provide evidence showing the Respondent's earnings during the fraud period. There is no proof Respondent had any income that he contributed to the group.

More importantly, the Department has failed to provide any evidence that the Respondent's wife contributed any income to the group. At no point did the Department present evidence that the Respondent's wife contributed income to the group which would have resulted in the Respondent receiving benefits to which he was not entitled.

Without proof of income, there is no evidence that the Respondent actually received an over-issuance—evidence of bad intent does not equal actual harm. The Medicaid program is an income dependent program; that is, the amount of income

determines the benefit level and deductible. If Respondent's wife did not contribute income to the group, Respondent may have actually been entitled to more benefits, i.e. a lower deductible, than he actually received by not reporting the income. Contrary to the Department's assertions, the mere presence of a falsehood does not result in over-issuance; over-issuance is solely a function of the income contributed to the group. If Respondent's wife did not contribute income, or contributed a low enough amount of income that was offset by the change in group size, no over-issuance can have occurred. If there was no over-issuance, there was no IPV, as an IPV is a type of over-issuance. What the Department has provided amounts to nothing more than a best guess that there might have been over-issuance, and that is not evidence that the Administrative Law Judge can rely upon.

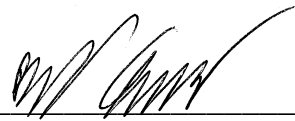
Therefore, although the Department has presented clear and convincing evidence that the Respondent intentionally neglected to report his group size, the Department has failed to satisfy the threshold requirement of proving an actual over-issuance, which is a necessary prerequisite for IPV.

The Administrative Law Judge acknowledges that when there is unreported income, there will probably be some degree of benefit over-issuance; this is not always the case, however. This is doubly true when there is no proof of unreported income. The Department must provide clear and convincing evidence to establish the over-issuance and the amount of over-issuance that it seeks to recoup. Without an over-issuance, there can be no IPV. Failure to fulfill this evidentiary requirement must therefore result in a finding of no IPV. Thus, the undersigned must hold that there is no clear and convincing evidence that the Respondent committed an Intentional Program Violation.

DECISION AND ORDER

The Administrative Law Judge decides the Department has not established that an over-issuance actually occurred. Therefore, the Respondent did not commit an Intentional Program Violation of the MA programs. The Department has failed to prove the validity of the recoupment amount, and the Respondent did not receive benefits that he was not eligible for.

Recoupment is DENIED.



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

Date Signed: 08/12/10

Date Mailed: 08/12/10

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:

