

**STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES**

**ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:

[REDACTED]
[REDACTED]
[REDACTED]

Reg. No: 201050669

Issue No: 3055

Case No: [REDACTED]

Load No: [REDACTED]

Hearing Date:

November 17, 2010

Alger County DHS

ADMINISTRATIVE LAW JUDGE: Kandra Robbins

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 (department) request for a disqualification hearing. After due notice, a hearing was held on November 17, 2010. 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

Whether respondent committed an Intentional Program Violation (IPV) on the Medical Assistance program and whether respondent received 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) Department's Office of Inspector General (OIG) filed a hearing request to establish an overissuance of MA 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.
- (2) Respondent signed an "Authorization to Represent" with [REDACTED] of Lansing on [REDACTED] (Department Exhibit 1 page 18).

- (3) [REDACTED] an employee of [REDACTED] signed Assistance Application (1171) on [REDACTED] on behalf of respondent, acknowledging that he understood his failure to give timely, truthful, complete and accurate information could result in a civil or criminal action or an administrative claim against him (Department Exhibit 1, pages 26 - 43).
- (4) The application did not list the respondent's current employment with [REDACTED].
- (5) The Office of Inspector General indicates that the time period they are considering the fraud period is October 2008.
- (6) The respondent had gall bladder surgery in October 2008 paid for by Medicaid coverage for a total cost of \$4, 280.07 (Department Exhibit 1 pp. 51 to 57).
- (7) Respondent was employed with [REDACTED] beginning on [REDACTED]. (Department Exhibit 1 pg. 45.)
- (8) Respondent has not committed any previous intentional MA program violations.

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 (BAM), the Program Eligibility Manual (BEM) and the Program Reference Manual (BRM).

The department's manuals provide the following relevant policy statements and instructions for department caseworkers:

BENEFIT OVERISSUANCES

DEPARTMENT POLICY

All Programs

When a client group receives more benefits than they are entitled to receive, DHS must attempt to recoup the overissuance (OI). BAM, Item 700, p. 1.

Definitions

The **Automated Recoupment System (ARS)** is the part of CIMS that tracks all FIP, SDA and FAP OIs and payments, issues automated collection notices and triggers automated benefit reductions for active programs.

A **claim** is the resulting debt created by an overissuance of benefits.

The **Discovery Date** is determined by the Recoupment Specialist (RS) for a client or department error. This is the date the OI is known to exist and there is evidence available to determine the OI type. For an Intentional Program Violation (IPV), the Office of Inspector General (OIG) determines the discovery date. This is the date the referral was sent to the prosecutor or the date the OIG requested an administrative disqualification hearing.

The **Establishment Date** for an OI is the date the DHS-4358A-D, Repay Agreement, is sent to the client and for an IPV, the date the DHS-4357 is sent notifying the client when the disqualification and recoupment will start. In CIMS the "establishment date" has been renamed "notice sent date."

An **overissuance (OI)** is the amount of benefits issued to the client group or CDC provider in excess of what they were eligible to receive. For FAP benefits, an OI is also the amount of benefits trafficked (traded or sold).

Overissuance Type identifies the cause of an overissuance.

Recoupment is a DHS action to identify and recover a benefit OI. PAM 700, p. 1.

PREVENTION OF OVERISSUANCES

All Programs

DHS must inform clients of their reporting responsibilities and act on the information reported within the Standard of Promptness (SOP).

During eligibility determination and while the case is active, clients are repeatedly reminded of reporting responsibilities, including:

- . Acknowledgments on the application form, **and**
- . Explanation at application/redetermination interviews, **and**
- . Client notices and program pamphlets.

DHS must prevent OIs by following BAM 105 requirements and by informing the client or authorized representative of the following:

- . Applicants and recipients are required by law to give complete and accurate information about their circumstances.
- . Applicants and recipients are required by law to promptly notify DHS of all changes in circumstances within 10 days. FAP Simplified Reporting (SR) groups are required to report only when the group's actual gross monthly income exceeds the SR income limit for their group size.
- . Incorrect, late reported or omitted information causing an OI can result in cash repayment or benefit reduction.
- . A timely hearing request can delete a proposed benefit reduction.

INTENTIONAL PROGRAM VIOLATION

DEFINITIONS

All Programs

Suspected IPV

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.

The federal Food Stamp regulations read in part:

- (c) Definition of Intentional Program Violation. Intentional Program Violation shall consist of having intentionally:
 - (1) made a false or misleading statement, or misrepresented, concealed or withheld facts; or
 - (2) committed any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization cards or reusable documents used as part of an automated benefit delivery system (access device). 7 CFR 273.16(c).

The federal Food Stamp regulations read in part:

- (6) Criteria for determining intentional program violation. The hearing authority shall base the determination of intentional program violation on clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, intentional program violation as defined in paragraph (c) of this section. 7 CFR 273.16(c)(6).

IPV Hearings

FIP, SDA, CDC, MA and FAP Only

OIG represents DHS during the hearing process for IPV hearings.

OIG requests IPV hearings for cases when no signed DHS-826 or DHS-830 is obtained, and correspondence to the client is not returned as undeliverable, or a new address is located.

OIG requests IPV hearing for cases involving:

1. FAP trafficking OIs that are not forwarded to the prosecutor.
2. Prosecution of welfare fraud or FAP trafficking is declined by the prosecutor for a reason other than lack of evidence, **and**

The total OI amount for the FIP, SDA, CDC, MA and FAP programs combined is \$1,000 or more, **or**

. The total OI amount is less than \$1,000, **and**

.. The group has a previous IPV, **or**

.. The alleged IPV involves FAP trafficking, **or**

.. The alleged fraud involves concurrent receipt of assistance (see PEM 222), **or**

.. The alleged fraud is committed by a state/government employee.

Excluding FAP, OIG will send the OI to the RS to process as a client error when the DHS-826 or DHS-830 is returned as undeliverable and no new address is obtained. PEM, Item 720, p. 10.

All Programs

A client/CDC provider error OI occurs when the client received more benefits than they were entitled to because the client/CDC provider gave incorrect or incomplete information to the department.

A client error also exists when the client's timely request for a hearing results in the deletion of a Department of Human Services (DHS) action, and any of:

- The hearing decision upholds the DHS action.
- The client withdraws the hearing request.
- The client fails to appear for the hearing which is not rescheduled.
- The State Office of Administrative Hearings and Rules (SOAHR)

sends written notice to proceed with case actions. BAM 710

In this case, the respondent, [REDACTED] never signed the application. The application was signed by an [REDACTED] employee on behalf of [REDACTED]. The only written authorization to represent submitted into evidence was signed by [REDACTED] after the date of the application in this matter. While it is clear that [REDACTED] began employment with the [REDACTED] on [REDACTED], and the application completed by [REDACTED] on [REDACTED] does not indicate this employment, it is unclear that this was an intentional oversight by [REDACTED] and not a result of miscommunication with the representative. This is particularly true since the only written authorization for the representative occurred after the application date. This Administrative Law Judge therefore concludes that the department has not shown, by clear and convincing evidence, that respondent committed a first intentional violation of the MA program. The department has shown that there was an overissuance in the amount of \$4,280.07 as a result of client error. This error was the result of neither [REDACTED] nor her representative reporting that she began employment on November 3, 2008. The Department properly processed the application submitted on the respondent's behalf. [REDACTED] was employed at the [REDACTED] home on [REDACTED] and therefore was not entitled to Medicaid coverage at that time. Although the over issuance is found to the result of client error, policy requires that the respondent repay the amount of overissuance. (BAM 705)

The Administrative Law Judge, based upon the clear and convincing evidence, decides respondent committed client error that resulted in an overissuance to the Department.

Therefore it is ORDERED that:

- (1) Respondent is responsible for full restitution of the \$4,280.07 MA overissuance caused by her error in the Assistance Application.

/s/
Kandra Robbins
Administrative Law Judge
for Ismael Ahmed, Director
Department of Human Services

Date Signed: December 1, 2010

Date Mailed: December 2, 2010

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.

KKR/tg

cc:

