STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES

IN THE MATTER OF:

Reg. No.:	201320090
Issue No.:	2006
Case No.:	███████
Hearing Date:	February 20, 2013
County:	Hillsdale County DHS

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

This matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37 upon the Department of Human Services' (Department) request for a hearing. After due notice, a telephone hearing was held on February 20, 2013 from Lansing, Michigan. The Department was represented by ███████████ of the Office of Inspector General (OIG). Respondent did not appear at the hearing and it was held in Respondent's absence pursuant to 7 CFR 273.16(e), Mich Admin Code R 400.3130(5), or Mich Admin Code R 400.3187(5).

ISSUES

1. Did Respondent receive an overissuance (OI) of Medical Assistance (MA) benefits that the Department is entitled to recoup?

2. Did Respondent commit an Intentional Program Violation (IPV)?

FINDINGS OF FACT

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

1. The Department's OIG filed a hearing request on December 27, 2012 to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.

2. The OIG has not requested that Respondent be disqualified from receiving program benefits.

3. Respondent was a recipient of MA benefits during the period of April 1, 2011 through June 30, 2011.

4. The Department's OIG indicates that the time period they are considering the fraud period is April 1, 2011 through June 30, 2011.

5. During the alleged fraud period, Respondent was issued $██████ in MA benefits from the State of Michigan.

6. The Department has not established that Respondent committed an IPV.

7. A notice of disqualification hearing was mailed to Respondent at the last known address and was not returned by the US Post Office as undeliverable.

CONCLUSIONS OF LAW

Department policies are contained in the Bridges Administrative Manual (BAM), the Bridges Eligibility Manual (BEM), and the Reference Tables Manual (RFT).

The Medical Assistance (MA) program is established by the 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 (formerly known as the Family Independence Agency) administers the MA program pursuant to MCL 400.10, *et seq.*, and MCL 400.105.

When a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700.

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.

IPV is suspected when there is **clear and convincing evidence** that the client has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. BAM 720.

The Department's OIG requests IPV hearings for cases when:

- benefit overissuance are not forwarded to the prosecutor.
- prosecution of welfare fraud is declined by the prosecutor for a reason other than lack of evidence, and
- the total overissuance amount is $1000 or more, or
- the total overissuance amount is less than $1000, and

A court or hearing decision that finds a client committed an IPV disqualifies that client from receiving program benefits. A disqualified recipient remains a member of an active group as long as he lives with them. Other eligible group members may continue to receive benefits. BAM 720.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period. Clients are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a concurrent receipt of benefits. BAM 720.

Clients must report changes in circumstances that potentially affect eligibility or benefit amount. BAM 105. Clients are required to report changes within 10 (ten) days of receiving the first payment reflecting the change. BAM 105. Clients are required to report changes in circumstances within 10 (ten) days after the client is aware of them. BAM 105. These changes include, but are not limited to changes regarding: (1) persons in the home; (2) marital status; (3) address and shelter cost changes that result from the move; (4) vehicles; (5) assets; (6) child support expenses paid; (7) health or hospital coverage and premiums; or (8) child care needs or providers. BAM 105.

Clients must cooperate with the local office in determining initial and ongoing eligibility. BAM 105. This includes completion of necessary forms. BAM 105. Clients must completely and truthfully answer all questions on forms and in interviews. BAM 105. Clients who are able but refuse to provide necessary information or take a required action are subject to penalties. BAM 105.

Here, the Department alleges that Respondent is guilty of an IPV because she failed to timely and properly report to the Department that she and her husband had left the State of Michigan and had relocated to Tennessee. According to the Department, Respondent was issued Michigan MA benefits during the time she was a resident of Tennessee which was from March 12, 2011 through June 22, 2011. The record evidence shows that Respondent's husband used a Michigan-issued EBT card in Tennessee from March 12, 2011 through June 22, 2011. During that time period, the Department contends that Respondent was an out-of-state resident which made her ineligible for Michigan MA benefits.

This Administrative Law Judge has reviewed all the evidence in this matter and finds that the Department has not shown by clear and convincing evidence that Respondent was guilty of an IPV. Moreover, the Department has not shown that Respondent acted

intentionally i.e., that she intentionally failed to report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination. In addition, the evidence is not clear and convincing that Respondent has no apparent physical or mental impairment that limits her understanding or ability to fulfill their reporting responsibilities. The DHS-1171 reveals that Respondent was mentally challenged and may have had a disability during the relevant time period. The Administrative Law Judge does not find the documentation regarding the purported telephone conversation with Respondent to be credible and/or persuasive. The Department representative who testified in this matter was not unable to answer questions from the Administrative Law Judge nor was she able to provide more specific information that was requested.

While this Administrative Law Judge does believe that Respondent received

DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, concludes that:

1. Respondent did not commit an IPV

2. Respondent did receive an overissuance of program benefits in the amount of $███████ from the MA program.

The Department is ORDERED to delete the OI and cease any recoupment action.

IT IS SO ORDERED.

/s/_____
C. Adam Purnell
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: February 20, 2013

Date Mailed: February 25, 2013

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.

CAP/cr

cc: █████████████████