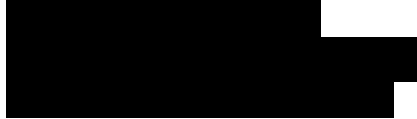


**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:



Reg. No.: 14-005388
Issue No.: 2006; 7007
Case No.:
Hearing Date: August 11, 2014
County: SAGINAW

ADMINISTRATIVE LAW JUDGE: Eric Feldman

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

Upon the request for a hearing by the Department of Human Services (Department), this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, and in accordance with Titles 7, 42 and 45 of the Code of Federal Regulations (CFR) and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on August 11, 2014, from Detroit, Michigan. The Department was represented by , Regulation Agent 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 400.3178(5).

ISSUES

1. Did Respondent receive an overissuance (OI) of
 Family Independence Program (FIP) State Disability Assistance (SDA)
 Food Assistance Program (FAP) Child Development and Care (CDC)
 Medical Assistance (MA) Adult Home Help (AHH)
benefits that the Department is entitled to recoup?
2. Did the Department establish, by clear and convincing evidence, that Respondent committed 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 OIG filed a hearing request on July 8, 2014, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.

2. Respondent was a recipient of FIP FAP SDA CDC MA AHH benefits issued by the Department.
3. Respondent was was not aware of the responsibility to report changes as required (i.e., employment and earnings).
4. Respondent had did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
5. The OIG indicates that the time period it is considering the fraud period is November 9, 2011 to October 31, 2012 (fraud period).
6. During the fraud period, Respondent was issued \$2,509.80 in FIP FAP SDA CDC MA AHH benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0.00 in such benefits during this time period.
7. The Department alleges that Respondent received an OI in FIP FAP SDA CDC MA AHH benefits in the amount of \$2,509.80.
8. This was Respondent's first second third alleged IPV.
9. A notice of hearing was mailed to Respondent at the last known address and was was not returned by the US Post Office as undeliverable.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), and Department of Human Services Reference Tables Manual (RFT). Prior to August 1, 2008, Department policies were contained in the Department of Human Services Program Administrative Manuals (PAM), Department of Human Services Program Eligibility Manual (PEM), and Department of Human Services Reference Schedules Manual (RFS).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10 and MCL 400.105-.112k.

The Adult Services Program (ASP) is established by Title XIX of the Social Security Act, 42 USC 1346 *et seq*, 42 CFR 440.170(f), the Social Welfare Act, and MCL

400.14(1)(p). The Department of Human Service (formerly known as the Family Independence Agency), along with the Michigan Department of Community Health (DCH), administers independent living services (home help) for personal care services pursuant to the Medicaid State Plan.

IPV hearings are requested by the OIG for the following cases:

- Willful overpayments of \$500.00 or more under the AHH program.
- FAP trafficking OIs that are not forwarded to the prosecutor.
- 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 is \$1000 or more, **or**
 - the total OI amount is less than \$1000, **and**
 - the group has a previous IPV, **or**
 - the alleged IPV involves FAP trafficking, **or**
 - the alleged fraud involves concurrent receipt of assistance (see BEM 222), **or**
 - the alleged fraud is committed by a state/government employee.

BAM 720 (May 2014), pp. 12-13; Adult Services Manual (ASM) 165 (May 2013), pp. 1-2.

Intentional Program Violation

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 reporting responsibilities.

BAM 700 (May 2014), p. 7; BAM 720, p. 1.

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. BAM 720, p. 1.

An IPV requires that the Department establish by 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, p. 1 (emphasis in original); see also 7 CFR 273(e)(6). Clear and convincing evidence is evidence sufficient to result in a clear and firm belief that the proposition is true. See M Civ JI 8.01.

Regarding AHH services, willful client overpayment occurs when all of the following apply:

- A client reports inaccurate or incomplete information or fails to report information needed to make an accurate assessment of need for services.
- The client was clearly instructed regarding their reporting responsibilities to the Department (a signed DHS-390 is evidence of being clearly instructed).
- The client was physically and mentally capable of performing their reporting responsibilities.
- The client cannot provide a justifiable explanation for withholding or omitting pertinent information.

ASM 165, pp. 1-2.

In this case, the Department alleges that Respondent committed an IPV of her AHH benefits due to her failure to report a change. The Department testified that Respondent failed to report to the Department that she was working for the Department of Community Home Help and that she failed to report two other employments, while receiving AHH. See Exhibit 1, p. 1.

Home help services are available if the client meets all eligibility requirements. ASM 105 (November 2011), p. 1. Home help eligibility requirements include all of the following:

- Medicaid eligibility.
- Certification of medical need.
- Need for service, based on a complete comprehensive assessment (DHS-324) indicating a functional limitation of level 3 or greater for activities of daily living (ADL).
- Appropriate Level of Care (LOC) status.

ASM 105, pp. 1-3.

The client has the right to choose the home help provider(s). ASM 135 (November 2011), 1. As the employer of the provider, the client has the right to hire and fire providers to meet individual personal care service needs. ASM 135, p. 1. Home help services is a benefit to the client and earnings for the provider. ASM 135, p. 1.

Finally, home help services may be provided for the specific purpose of enabling the client to be employed. ASM 122 (November 2011), p. 1.

- The current assessment process for personal care needs remains unchanged. A separate assessment for the workplace is not required.
- The hours approved may be used either in the home or the workplace. Additional hours are not available as a result of employment. Home help services cannot be approved for supervision.

ASM 122, p. 1. The client determines where services are to be provided, whether in the home or the workplace. ASM, p. 1.

At the hearing, the Department presented evidence to show why it believed the Respondent was aware of her responsibility to report changes as required (i.e., employment and wages) and that she intentionally withheld or misrepresented the information for the purpose of establishing, maintaining, increasing or preventing reduction of her AHH program benefits or eligibility.

First, before Respondent was a recipient of AHH services, she was a provider to her mother and was paid to be her mother's chore provider from March 2009 to September 2011. See Exhibit 1, p. 1. The following documentation discusses Respondent as the provider: the Department presented Respondent's Home Help Services (HHS) Statement of Employment dated March 16, 2009, to show that she acknowledged her rights and responsibilities as a provider of HHS. See Exhibit 1, p. 12. The Department also presented an Adult Services Comprehensive Assessment Form dated March 20, 2009, to show that Respondent (provider) assists with housework, laundry, shopping for food/meds, and meal preparation. See Exhibit 1, pp. 36-41.

Second, the Department presented an Advance Negative Action Notice effective September 21, 2011, which was mailed to the mother informing her that her HHS would be suspended as the Respondent could not be her chore provider while claiming to be disabled herself and in need of home help. See Exhibit 1, p. 42.

Third, the Department presented a Home Help Services Statement of Employment dated November 9, 2011, which Respondent acknowledged her rights and responsibilities as now being a recipient of HHS and having her own provider assist her. See Exhibit 1, p. 13 and see also Respondent's Adult Services Application dated November 9, 2011; pp. 14-15.

Fourth, the Department presented Respondent's Adult Services Comprehensive Assessment Form dated November 23, 2011, which indicated that Respondent needed assistance with but not limited to the following: putting some articles of clothing on, housework on really bad days – including doing the dishes, laundry, etc... See Exhibit 1, pp. 16-21.

Fifth, the Department presented Respondent's first employment income dated August 31, 2012. See Exhibit 1, pp. 26-27 and see also New Hire Client Notice dated February 22, 2012; pp. 24-25. In fact, the New Hire Client Notice was completed by the employer. See Exhibit 1, pp. 24-25. Nevertheless, the verification of employment indicated that she began employment December 14, 2011 and received wages from January 6, 2012 to March 16, 2012. See Exhibit 1, pp. 26-27.

The Department also presented Respondent's second employment income dated September 7, 2012. See Exhibit 1, pp. 28-29. The verification of employment indicated that she began employment August 24, 2012 and received wages from September 6, 2012, ongoing. See Exhibit 1, pp. 26-27.

Based on the above information, Respondent appeared to have no employment from on or around March 17, 2012 to August 23, 2012 (approximately 5 months). It should be noted that on October 24, 2012, the Department attempted to contact Respondent and discovered that she was employed when her voice message indicated such. See Exhibit 1, p. 22.

Sixth, the Department presented Respondent Employee Wage History, which verified that she received earned income from 1st quarter of 2009 to 4th quarter of 2011, while working as a home help chore provider through the Department of Community Health (DCH) Home Help. See Exhibit 1, pp. 30-31. Moreover, the DCH payroll history verifies that Respondent was paid to be a chore provider for her mother from February 2009 through October 6, 2011. See Exhibit 1, pp. 32-33. Also, the DCH payroll history indicated Respondent had a chore provider from April 2010 to November 9, 2012. See Exhibit 1, p. 34-35.

In summary, the Department's OIG report indicated that Respondent received HHS from April 2010 to October 2012. See Exhibit 1, p. 3. The Department argues that Respondent failed to report to the Department her earnings from DCH and her two other employers, while she received HHS. See Exhibit 1, p. 3. The OIG report indicated that the job titles include chore provider, dish worker, and substitute support staff, each of which demonstrates that she was earning money for similar activities that the Department was paying a chore provider to assist her with in her everyday life. See Exhibit 1, p. 3.

Based on the foregoing information and evidence, the Department has failed to establish that Respondent committed an IPV of her AHH benefits.

First, the OIG report stated the initial alleged fraud period was April 25, 2010 to October 2012; however, the report stated there were no documents to collaborate that the Respondent acknowledged her rights and responsibilities. See Exhibit 1, pp. 3-4. Therefore, the Department determined the alleged fraud period is November 9, 2011 to October 2012. Nevertheless, the evidence presented that Respondent did not receive wages from DCH for the alleged fraud period. Respondent only received wages from DCH for being a chore provider from February 2009 to October 6, 2011. See Exhibit 1, pp. 32-33. As such, Respondent's failure to report a change for receiving DCH payments is not applicable to the alleged fraud period.

Second, the Department argued that Respondent was earning money for similar activities that the Department was paying a chore provider to assist her with in her everyday life. See Exhibit 1, p. 3. However, the Department failed to present any testimony of ASM policy that prohibits the Respondent from working while being a recipient of AHH. In fact, ASM 122 allows the client to have home help services for the specific purpose of enabling the client to be employed. ASM 122, p. 1. A separate assessment for the workplace is not required. ASM 122, p. 1.

Third, the Department failed to establish that Respondent was employed during the entire alleged fraud period. The evidence presented that Respondent was not employed from on or around March 17, 2012 to August 23, 2012 (approximately 5 months). See Exhibit 1, pp. 24-31. As such, the Department did not satisfy its burden of showing that Respondent was employed during the entire alleged fraud period.

In summary, in the absence of any clear and convincing evidence that Respondent intentionally withheld or misrepresented the information for the purpose of establishing, maintaining, increasing or preventing reduction of her AHH program benefits or eligibility, the Department has failed to establish that Respondent committed an IPV of AHH benefits.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, pp. 15-16. A disqualified recipient remains a member of an active group as long as he lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the OI relates to MA. BAM 720, p. 16. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (July 2013), p. 2. 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 FAP concurrent receipt of benefits. BAM 720, p. 16.

In this case, the Department has failed to satisfy its burden of showing that Respondent committed an IPV concerning AHH benefits. BAM 720, p. 16.

Overissuance

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

As stated previously, the Department failed to show that Respondent committed an IPV of her AHH benefits. However, the Department can still proceed with recoupment of the OI when there is client error.

The Department is responsible for correctly determining accurate payment for services. ASM 165, p. 1. When payments are made in an amount greater than allowed under department policy, an overpayment occurs. ASM 165, p. 1.

Four factors may generate overpayments: (i) client errors; (ii) provider errors; (iii) administrative errors; and (iv) Department upheld at an administrative hearing. ASM 165, p. 1.

Based on the Department's case presentation, it seeks an overpayment from the Respondent based on a client error. Client errors occur whenever information given to the department, by a client, is incorrect or incomplete. ASM 165, p. 1. This error may be willful or non-willful. ASM 165, p. 1. The willful client overpayment requirements are stated under the IPV analysis. But, non-willful client overpayments occur when either:

- The client is unable to understand and perform their reporting responsibilities to the department due to physical or mental impairment.
- The client has a justifiable explanation for not giving correct or full information.

ASM 165, pp. 2-3.

Based on the foregoing information, the Department failed to establish that Respondent committed a client error (both willful and non-willful) of her AHH benefits (\$2,509.80). As stated previously, the Department failed to establish that Respondent was employed during the entire OI period. The evidence presented that Respondent was not employed from on or around March 17, 2012 to August 23, 2012 (approximately 5 months). See Exhibit 1, pp. 24-31. As such, the evidence failed to establish that Respondent was employed the entire alleged OI period, while also receiving AHH benefits. Therefore, the Department failed to establish an OI of her AHH benefits for the alleged OI period and that part-time employment violated any policy provision or law.

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, if any, concludes that:

1. The Department has has not established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did did not receive an OI of program benefits in the amount of \$2,509.80 from the following program(s) FIP FAP SDA CDC MA AHH

The Department is ORDERED to

delete the OI and cease any recoupment action.



Eric Feldman
Administrative Law Judge
for Maura Corrigan, Director
Department of Human Services

Date Signed: August 21, 2014

Date Mailed: August 21, 2014

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.

EJF/cl

cc:

