

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

IN THE MATTER OF:



MAHS Reg. No.: 15-005998
Issue No.: 2005
Agency Case No.:
Hearing Date: June 11, 2015
County: Genesee (6) Clio Rd

ADMINISTRATIVE LAW JUDGE: Colleen Lack

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

Upon the request for a hearing by the Department of Health and 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 Regulation (CFR), particularly 7 CFR 273.16 and 45 CFR 235.110; and with Mich Admin Code, R 400.3130 and 400.3178. After due notice, a telephone hearing was held on June 11, 2015, from Lansing, Michigan. The Department was represented by , Regulation Agent of the Office of Inspector General (OIG).

Participants on behalf of Respondent included: .

ISSUES

1. Did Respondent receive an overissuance (OI) of Medical Assistance (MA) 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 Department's OIG filed a hearing request on April 23, 2015, 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. MA benefits were issued by the Department for children in Respondent's home ([REDACTED] and [REDACTED]).
4. Respondent was aware of the responsibility to report any household changes, including changes with household composition, to the Department.
5. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The Department's OIG indicates that the time period it is considering the fraud period is June 1, 2013, through February 28, 2014, (fraud period).
7. During the fraud period, Respondent was issued \$ [REDACTED] in MA benefits by the State of Michigan for the children at issue, and the Department alleges that these children were entitled to \$ [REDACTED] in such benefits during this time period.
8. The Department alleges there was an OI in MA benefits in the amount of \$ [REDACTED] for the children at issue.
9. A Notice of 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 Department of Health and Human Services Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), Adult Services Manual (ASM), and Reference Tables Manual (RFT).

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 Department of Human Services) administers the MA program pursuant to 42 CFR 435, MCL 400.10 and MCL 400.105-.112k.

Effective October 1, 2014, the Department's OIG requests IPV hearings for the following cases:

- FAP trafficking overissuances 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 amount for the FIP, SDA, CDC, MA and FAP programs combined is \$500 or more, or
- the total amount is less than \$500, 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 (October 1, 2014), pp. 12-13.

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 1, 2014), p. 7; 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.

In this case, the Department has established that Respondent was aware of the responsibility to timely and accurately report to the Department all household changes, including changes with household composition. Department policy requires clients to report any change in circumstances that will affect eligibility or benefit amount within 10 (ten) days of receiving the first payment reflecting the change. BAM 105, (March 1, 2013), p. 7. Respondent's signature on Assistance Application in this record certifies that she was aware of the change reporting responsibilities and that fraudulent participation in benefits could result in criminal or civil or administrative claims.

Respondent had no apparent physical or mental impairment that limits understanding or ability to fulfill the reporting responsibilities.

The Department obtained [REDACTED] school records documenting that the children at issue were enrolled in that state from [REDACTED], through [REDACTED]. Further, [REDACTED] Social Service records show the children at issue were active for MA in that state from [REDACTED], through [REDACTED].

Respondent provided detailed credible testimony that she timely reported this change in household composition to the Department. Respondent provided specific details regarding the circumstances at the time the children left her home and of leaving a voice message reporting this change to the Department the next day. Respondent also stated that each time a re-determination form was issued to her, about every six months, the Department continued to list these children as being in the home. Respondent testified that each time she marked on the form that these children were no longer in the home when she completed and returned it to the Department.

Overall, the evidence does not establish that the Respondent committed an IPV by clear and convincing evidence.

Overissuance

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

In this case, the evidence of record shows that during the above-mentioned fraud period there was an OI of MA benefits for the children at issue. As noted above, the evidence was not sufficient to establish the OI was due to an IPV. However, the evidence establishes that the OI occurred. Therefore, the Department must still attempt to recoup the OI.

Respondent's children were not eligible for Michigan issued MA benefits after their move to [REDACTED] or for MA benefits to be issued by both states. The evidence of record shows that during the above-mentioned fraud period there was an OI of MA benefits in the amount of \$ [REDACTED] the total of the MA premiums for the children at issue.

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 not established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did receive an OI of program benefits in the amount of \$ [REDACTED] from the MA program.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$ [REDACTED] in accordance with Department policy.



Colleen Lack
Administrative Law Judge
for Nick Lyon, Director
Department of Health and Human Services

Date Mailed: 7/7/2015

CL/jaf

NOTICE: The law provides that within 30 days of receipt of the above Hearing Decision, the Respondent may appeal it to the circuit court for the county in which he/she lives or the circuit court in Ingham County. A copy of the claim or application for appeal must be filed with the Michigan Administrative Hearing System (MAHS).

cc:

