

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

IN THE MATTER OF:

[REDACTED]

MAHS Reg. No.: 15-003575
Issue No.: 2005
DHHS Case No.: [REDACTED]
Hearing Date: July 01, 2015
County: Hillsdale

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 July 1, 2015, from Lansing, Michigan. The Department was represented by [REDACTED] [REDACTED] Regulation Agent of the Office of Inspector General (OIG).

Participants on behalf of Respondent included: [REDACTED] [REDACTED]

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)?
3. Should Respondent be disqualified from receiving benefits for MA?

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 March 16, 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. Respondent was a recipient of MA benefits issued by the Department.
4. Respondent was aware of the responsibility to cooperate with the local office in determining initial and ongoing eligibility; completely and truthfully answer all questions on forms and in interviews; and timely and accurately reporting to the Department all household changes that may affect eligibility.
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 September 1, 2012, through September 30, 2013, (fraud period).
7. During the fraud period, Respondent was issued \$ [REDACTED] in MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$ [REDACTED] in such benefits during this time period.
8. The Department alleges that Respondent received an OI in MA benefits in the amount of \$ [REDACTED]
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 alleges that Respondent misrepresented himself as residing in Michigan during the fraud period resulting in an overissuance of MA benefits.

The Department has established that Respondent was aware of the reporting responsibilities. Department policy requires clients to cooperate with the local office in

determining initial and ongoing eligibility. Clients must completely and truthfully answer all questions on forms and in interviews. Department policy also requires clients to report any change in circumstances that will affect eligibility or benefit amount within 10 days of receiving the first payment reflecting the change. BAM 105, (May 1, 2012), pp. 5-8. Respondent's signature on the Assistance Applications in this record certify that he was aware of the 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.

A Warranty Deed documents that Respondent purchased a property in [REDACTED] on [REDACTED]. Respondent's address at the time of the purchase was in [REDACTED] (Department Exhibit A, p. 115) The [REDACTED], date stamp at the bottom of the page matches the Department's date stamp on other documents, such as the Assistance Applications. (Department Exhibit A pp. 12, 45, 69, and 115) Accordingly, the evidence supports that Respondent provided the copy of this deed to the Department as a verification for processing his August 10, 2012, Assistance Application. It was uncontested that the property in [REDACTED] is vacant land.

On the August 10, 2012, Assistance Application, Respondent reported his address as the address of his property in [REDACTED] [REDACTED]. However, Respondent also reported he was homeless; he moved to Michigan August 2, 2012; he intended to remain in Michigan; and he previously received assistance from [REDACTED]. Notes on the application form that appear to be from the Department worker indicate: the Department was aware that the address in [REDACTED] Michigan was only a property; Respondent reported he was staying with family and friends; and an [REDACTED], collateral contact with the equivalent Department in [REDACTED] confirmed that Respondent had already reported to them that he moved to Michigan and his [REDACTED] benefits would close [REDACTED]. (Department Exhibit A pp. 12-32)

An August 23, 2012, SOLQ report documents that Respondent listed his address as being in [REDACTED] [REDACTED] for his Social Security Administration (SSA) benefit case. It is noted that Respondent's residence address in Defiance, Ohio, is different from the mailing address of his representative payee for the Supplemental Security Income (SSI) benefits. (Department Exhibit A, p. 116-118)

An April 18, 2013, SOLQ report documents that Respondent continued to list his address as being in [REDACTED] [REDACTED] for his SSA benefit case. Respondent's residence address in [REDACTED] [REDACTED] remained different from the mailing address of his representative payee for the SSI benefits. (Department Exhibit A, p. 119-121)

In a May 2, 2013, Notice of Case Action, the comments from the Department Specialist noted that the prior MA case closed in error; and MA had been re-opened. The comments further document that the Department was aware that the Social Security Office showed an [REDACTED] residence for Respondent. Therefore, the comments advised

Respondent that his MA would close again unless he provided proof of Michigan residency, not just property ownership, to the Department. (Department Exhibit A, pp. 40)

On the June 21, 2013, Assistance Application, Respondent reported his address as the address of his property in [REDACTED] Michigan. However, Respondent also reported that he was homeless. Notes on the application form that appear to be from the Department worker indicate Respondent was adding/changing his mailing address to [REDACTED] [REDACTED]. There was also some indication in these notes that Respondent's physical address was to be updated to the [REDACTED] address. (Department Exhibit A pp. 45-68)

On the August 7, 2013, Assistance Application Respondent reported his address as the address of his property in [REDACTED] Michigan. However, Respondent also reported that he was homeless. Respondent specified that he only stays at the application address once or twice per week. A note on the application form that appears to be from the Department worker indicates the Department was also aware of Respondent's address in [REDACTED] [REDACTED] (Department Exhibit A pp. 69-92)

Respondent testified he believes he only had to be in Michigan one day to qualify for Michigan issued MA benefits. The printout of the MA benefit usage for dates of service from September 2012 through September 2013 show the MA benefits were only used in Michigan, and there was at least one date of service each month. (Department Exhibit A, pp. 127-132)

Overall, the evidence does not establish that Respondent intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. There was no evidence that Respondent ever claimed there was a house or other structure that he was residing in on the property in [REDACTED] Michigan. All applications show that while Respondent reported this property as his address, he also reported being homeless. The documentary evidence establishes that the Department was also aware of Respondent's address in [REDACTED] [REDACTED] at the time each application was processed. Further, at the time of the August 10, 2012, MA application, the Department confirmed with the equivalent Department in [REDACTED] that they were aware Respondent moved to Michigan and his [REDACTED] MA benefits case would close [REDACTED]. There was no evidence of concurrent MA benefits, such as MA benefits re-opening in [REDACTED] during the fraud period. The Department has not established that Respondent committed an IPV by clear and convincing evidence.

Disqualification

Under the Department policy, there is no disqualification for an individual who is found to have committed a MA IPV. (See BAM 720) Therefore, Respondent would not be subject to disqualification.

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 must still be reviewed to determine whether or not Respondent received an OI of MA benefits during the above-mentioned fraud period. As noted above, the evidence was not sufficient to establish the OI was due to an IPV. However, if the evidence establishes that the OI occurred, the Department must still attempt to recoup the OI.

As noted during the telephone hearing proceedings, it was uncontested that as an SSI recipient, Respondent met the disability criteria for MA benefits. However, Respondent still had to meet residency criteria to qualify for Michigan issued MA benefits.

To be eligible for Michigan issued benefits, a person must be a Michigan resident. BEM 220, (January 1, 2012), p. 1.

For MA, the BEM 220 policy further states:

A person is **not** a Michigan resident for any month in which he received an SSI state supplement payment from another state.

An individual is a Michigan resident if either of the following apply:

- The individual lives in Michigan, except for a temporary absence, **and** intends to remain in Michigan permanently or indefinitely.

(BEM 220, p.1., emphasis in original)

Regarding homelessness, the BEM 220 policy states:

A **homeless person** is an individual who lacks a fixed and regular nighttime dwelling **or** whose temporary night time dwelling is one of the following:

- Supervised private or public shelter for the homeless.
- Halfway house or similar facility to accommodate persons released from institutions.
- Home of another person.
- Place not designed or ordinarily used as a dwelling (for example, a building entrance or hallway, bus station, park, campsite, vehicle).

Lack of a permanent dwelling or fixed mailing address does not affect an individual's state residence status. Assistance cannot be denied **solely** because the individual has no permanent dwelling or fixed address.

(BEM 220, p. 2, emphasis in original)

Accordingly, the lack of a permanent dwelling alone does not disqualify Respondent from meeting Michigan residency requirements. However, the property in [REDACTED] Michigan, being a vacant lot was not the only evidence that Respondent was not residing in Michigan during the fraud period.

The August 23, 2012, and April 18, 2013, SOLQ reports document that Respondent utilized a [REDACTED] [REDACTED] address for his residence for his SSI case during the fraud period. (Department Exhibit A, pp. 116-121) There was no evidence that Respondent updated his residence with SSA to a Michigan address at any point during the fraud period. Further, if Respondent received an SSI state supplement from the State of [REDACTED] for any month(s) during the fraud period, BEM 220 specifies the Respondent was not a Michigan resident for any such month(s).

On the August 7, 2013, MA application Respondent specified that he only stays at the application address once or twice per week. (Department Exhibit A, p. 71)

A [REDACTED], through [REDACTED], bank statement shows that Respondent used the [REDACTED] Michigan address for this account, but of the withdrawal/debit transactions during this time period occurred in [REDACTED] (Department Exhibit A, p. 110)

Respondent's testimony acknowledged that he spent some nights in [REDACTED] Respondent explained that he has a minor child in [REDACTED] whom he cares for on a part-time basis. This testimony indicates that on a recurring basis Respondent stayed in [REDACTED] to care for his child.

Overall, the evidence is more supportive of a finding that Respondent only spent a few days of each month in Michigan during the fraud period. While it does not appear that Respondent intentionally withheld or misrepresented information for his Michigan MA case, the overall evidence does not establish that Respondent met the residency criteria found in BEM 220 to qualify for Michigan issued MA benefits. Therefore, he was not eligible for the Michigan issued MA benefits.

In this case, the evidence of record shows that during the above-mentioned fraud period Respondent received an OI of MA benefits in the amount of \$ [REDACTED] (Department Exhibit A, pp. 127-132)

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: **7/24/2015**

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:

