



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
Christopher Seppanen  
Executive Director

SHELLY EDGERTON  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED]

Date Mailed: June 9, 2016  
MAHS Docket No.: 15-013137

[REDACTED]  
Petitioner: OIG

[REDACTED]

### **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 May 23, 2016, from Lansing, Michigan. The Department was represented by [REDACTED] Regulation Agent of the Office of Inspector General (OIG). The Respondent was represented by herself.

### **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 July 21, 2015, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. The OIG **has** requested that Respondent be disqualified from receiving MA program benefits.
3. Respondent was a recipient of MA benefits issued by the Department.

4. On the Assistance Application, DHS 1171, signed by Respondent on July 27, 2012 and August 16, 2013, the Respondent reported that she intended to stay in [REDACTED] Department Exhibit 1, pgs. 9-38.
5. Respondent **was** aware of the responsibility to report changes in her residence to the Department where the Respondent had an open [REDACTED] MA case while residing in the [REDACTED] [REDACTED] for over thirty (30) consecutive days. Department Exhibit 1, pgs. 44-45.
6. Respondent **did not have** an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
7. The Department's OIG indicates that the time period it is considering the fraud period is February 1, 2013 through April 30, 2013 (fraud period).
8. During the fraud period, Respondent was issued [REDACTED] in MA benefits by the [REDACTED], and the Department alleges that Respondent was entitled to [REDACTED] in such benefits during this time period.
9. The Department alleges that Respondent received an OI in MA benefits in the amount of [REDACTED]
10. During the alleged fraud period, Respondent was issued MA benefits from the [REDACTED] during the alleged fraud period from January 2013 through November 2013. Department Exhibit 1, pgs. 39-40.
11. 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:

- Willful overpayments of \$500.00 or more under the AHH program.
- FAP trafficking over issuances 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; ASM 165.

### **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; BAM 720.

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

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, (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.

### Disqualification

A client who is found to have committed an IPV by a court or hearing decision is disqualified from receiving program benefits. BAM 720; BEM 708. Clients are disqualified for ten years for a FAP IPV involving concurrent receipt of benefits, and, for all other IPV cases involving FIP, FAP or SDA, for standard disqualification periods of one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. BAM 720. CDC clients who intentionally violate CDC program rules are disqualified for six months for the first occurrence, twelve months for the second occurrence, and lifetime for the third occurrence. BEM 708. A disqualified recipient remains a member of an active group as long as he/she lives with them, and other eligible group members may continue to receive benefits. BAM 720.

### Overissuance

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

In this case, the Respondent was a recipient of MA benefits issued by the Department. On the Assistance Application, DHS 1171, signed by Respondent on July 27, 2012 and August 16, 2013, the Respondent reported that she intended to stay in [REDACTED]. Respondent **was** aware of the responsibility to report changes in her residence to the Department where the Respondent had an open [REDACTED] MA case while residing in the [REDACTED] for over thirty (30) consecutive days. Respondent **did not have** an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. The Department's OIG indicates that the time period it is considering the fraud period is February 1, 2013 through April 30, 2013 (fraud period). During the fraud period, Respondent was issued [REDACTED] in MA benefits by the [REDACTED], and the Department alleges that Respondent was entitled to [REDACTED] in such benefits during this time period. The Department alleges that Respondent received an OI in MA benefits in the amount of [REDACTED]. During the alleged fraud period, Respondent was issued MA benefits from the [REDACTED] during the alleged fraud period from January 2013 through November 2013. A notice of hearing was mailed to Respondent at the last known address and **was not** returned by the US Post Office as undeliverable. Department Exhibit 1, 9-45.

During the hearing, the Respondent stated that she thought that the [REDACTED] Department Caseworker would call her [REDACTED] Department Caseworker once she received MA benefits in [REDACTED]. She did not report to her [REDACTED] Department Caseworker that she was no longer in the [REDACTED]. The Respondent was in the [REDACTED] being treated for breast cancer for a few months. Her intent was always to come back to [REDACTED] after treatment. It seemed that this was a very traumatic time for the Respondent. She told OIG Agent during the interview that she had called her [REDACTED] Department Caseworker and left her a message to close her

MA case and that she would be back in a few months because she having surgery due to breast cancer. However, the Respondent's case was not closed in [REDACTED] whether due to Department's or Respondent's error with a threshold of greater than [REDACTED] which requires the Respondent to reimburse the Department.

Additionally, the Respondent failed to report changes in her residence to the Department where the Respondent received concurrent MA benefits in the [REDACTED], during the contested time period, which resulted in her receiving an overissuance of MA benefits of [REDACTED] that the Department is required to recoup. However, the Respondent did not have an intent to commit an IPV, she was trying to get medical treatment for her condition.

### **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 following program(s) MA.

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

*Carmen G. Fahie*

CF/db

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**Carmen G. Fahie**  
Administrative Law Judge  
for Nick Lyon, Director  
Department of Health and Human Services

**NOTICE OF APPEAL:** A party may appeal this Order in circuit court within 30 days of the receipt date. A copy of the circuit court appeal must be filed with the Michigan Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS within 30 days of the date the Order was issued. The party requesting a rehearing or reconsideration must provide the specific reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings  
Reconsideration/Rehearing Request  
P.O. Box 30639  
Lansing, Michigan 48909-8139

[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED] [REDACTED]