



RICK SNYDER
GOVERNOR

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

MIKE ZIMMER
DIRECTOR

[REDACTED]

Date Mailed: April 14, 2016
MAHS Docket No.: 15-012434
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: C. Adam Purnell

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 with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on March 31, 2016 from Lansing, Michigan. The Department was represented by [REDACTED] Regulation Agent of the Office of Inspector General (OIG). Respondent appeared and participated by telephone.

ISSUES

1. Did Respondent receive an overissuance (OI) of Adult Home Help (AHH) benefits that the Department is entitled to recoup?
2. Did Respondent, by clear and convincing evidence, 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. Respondent was married to [REDACTED] ("Respondent's spouse") at all relevant times.
2. On November 7, 2012, Respondent submitted an Adult Services Application (DHS-390) seeking AHH benefits including assistance with housework, laundry, shopping, and meal preparation. On the application, Respondent indicated that he was separated from his spouse and that he lived alone. [Exhibit 1, p. 13].

3. The Department provided Respondent received AHH benefits including assistance with housework, laundry, shopping, and meal preparation issued by the Department. [Exh. 1, p. 16].
4. The Department provided Respondent with AHH benefits from November 7, 2012 through December 31, 2014 (fraud period). [Exh. 1, pp. 18-27].
5. During the relevant time period, records showed that Respondent's spouse lived with Respondent in the same household:
 - a. Real property tax assessor records. [Exh. 1, pp. 41-48].
 - b. Assistance Application signed by Respondent's spouse dated May 14, 2014. [Exh. 1, p. 51].
 - c. Payroll checkstubs from Respondent's spouse dated April 30, 2014 and May 15, 2014. [Exh. 1, pp. 83-84].
 - d. Shelter Verification (DHS-3688) dated February 4, 2014. [Exh. 1, pp. 86-88].
 - e. Assistance Application signed by Respondent's spouse dated September 29, 2014. [Exh. 1, p. 91].
 - f. Semi-Annual Contact Report (DHS-1046) signed by Respondent's spouse dated September 26, 2014. [Exh. 1, pp. 121-122].
 - g. Verification of Student Information (DHS-3380) signed by Respondent's spouse on November 10, 2014. [Exh. 1, pp. 123-124].
 - h. Land Contract dated November 29, 2012. [Exh. 1, pp. 135-140].
 - i. Leasing Agreement dated February 4, 2011. [Exh. 1, pp. 141-154].
 - j. Redetermination (DHS-1010) signed by Respondent's spouse on March 25, 2015. [Exh. 1, pp. 155-160].
 - k. Payroll checkstub from Respondent's spouse dated February 20, 2015 and March 6, 2015. [Exh. 1, pp. 161-162].
6. Respondent's spouse lived at Respondent's residence during the fraud period and was able and available to serve as a provider for Respondent for purposes of AHH services.
7. The Department alleges that Respondent committed an IPV when he willfully and intentionally failed to inform the Department that he was living with his legal spouse in order to receive AHH services.
8. Respondent was aware of the responsibility to provide the Department with full and correct information and to accurately and timely report changes as required.
9. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
10. The Department's OIG indicates that the time period it is considering the fraud period is November 7, 2012 through December 31, 2014 (fraud period).

11. During the alleged fraud period, Respondent was issued \$ [REDACTED] in AHH benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
12. The Department alleges that Respondent received an OI of AHH benefits in the amount of \$ [REDACTED]
13. The Department's OIG filed a hearing request on July 10, 2015, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
14. The hearing took place on July 10, 2015.
15. During the hearing, Respondent argued that the Department has not shown that his spouse was physically "in the home" during the fraud period. Respondent testified that his spouse was a drug addict and that she falsely reported that she lived at Respondent's residence on multiple occasions. Respondent also stated that he was incarcerated from 2006 to 2007 and again from 2010 to 2012.
16. In support of his position, Respondent submitted a copy of an apartment lease signed by his spouse dated May 2, 2014. [Exh. 2, pp. 165-183].
17. Respondent's testimony that his spouse falsely reported that she lived at Respondent's residence is not credible. Respondent provides no support for this position. Respondent's sole exhibit are lease documents dated May, 2015, which is well after the Department's fraud period.

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 Adult Services Program (ASP), which provides for AHH benefits, 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 Health and Human Services (formerly known as the Department of Human Services), 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.

Intentional Program Violation

An Intentional Program Violation (IPV) is a benefit overissuance resulting from the willful withholding of information or other violation of law or regulation by the client or his/her authorized representative. Bridges Program Glossary (BPG) (7-1-2015), p 36.

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 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 OI amount for the FIP, SDA, CDC, MA and FAP programs is \$500 or more, **or**
 - the total OI 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 (10-1-2014), p. 12-13; ASM 165 (5-1-2013)

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 (5-1-2014), p. 6; 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 Michigan Civil Jury Instruction (Mich Civ JI) 8.01.

The Department has the burden of establishing by clear and convincing evidence that the Respondent committed an Intentional Program Violation (IPV). The clear and convincing evidence standard, which is the most demanding standard applied in civil cases, is established where there is evidence so clear, direct and weighty and convincing that a conclusion can be drawn without hesitancy of the truth of the precise facts in issue. *Smith v Anonymous Joint Enterprise*, 487 Mich 102; 793 NW2d 533 (2010), reh den 488 Mich 860; 793 NW2d 559 (2010).

Clear and convincing proof is that which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the precise facts in issue. Evidence may be uncontroverted and yet not be clear and convincing. Conversely, evidence may be clear and convincing even if contradicted. *Id.*

With regard to AHH benefits, the department is responsible for correctly determining accurate payment for services. When payments are made in an amount greater than allowed under department policy, an overpayment occurs. When an overpayment is discovered, corrective actions must be taken to prevent further overpayment and to recoup the overpayment amount. ASM 165, p. 1.

Four factors may generate overpayments: (1) client errors; (2) provider errors; (3) administrative errors; and (4) department upheld at an administrative hearing. Department policy provides that it must take “appropriate action” when any of these factors occur. ASM 165, p. 1.

Client errors occur whenever information given to the department, by a client, is incorrect or incomplete. This error may be willful or non-willful. ASM 165, p. 1.

Willful Client Overpayment

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. [Emphasis added].

When willful overpayments of \$500.00 or more occur, a DHS-834, Fraud Investigation Request, is completed and sent to the Office of Inspector General. **No recoupment action is taken on cases that are referred to OIG for investigation, while the investigation is being conducted.** When willful overpayments under \$500 occur, initiate recoupment process. ASM 165, p. 2. [Emphasis in original].

Non-Willful Client Overpayment

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.

All instances of non-willful client error must be recouped. No fraud referral is necessary. ASM 165, pp. 3-7.

Home help services are not covered for services where there is a responsible relative who is able and available to provide the services. ASM 101 (12-1-2013), p. 5. These services include house cleaning, laundry or shopping). ASM 101, p. 5. A “responsible relative” is defined as an individual’s spouse or a parent of an unmarried child under age 18. ASM 101, p. 5.

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. The Department has shown by clear and convincing evidence that Respondent is responsible for an IPV related to AHH benefits. The record shows that Respondent intentionally failed to report accurate information to the Department (i.e., that his spouse was living with him during the relevant time period) for the purpose of obtaining or maintaining AHH benefits. The record further shows that Respondent’s spouse was able and available to provide these services (house cleaning, laundry, shopping, etc.) to Respondent. This is shown by the records which indicate that Respondent’s spouse was employed during the fraud period. The Department is

not required to prove that Respondent's spouse was actually, physically in the home during the fraud period. This can be established from the documentation and through circumstantial evidence on the whole record.

The Department has also shown that Respondent received an overpayment of AHH benefits and that the overpayment was willful. First, Respondent falsely reported to the Department that he lived "alone" when the objective records showed that his spouse lived with him. Second, Respondent's signature on the Adult Services Application (DHS-390) demonstrates that he was clearly instructed regarding his reporting responsibilities. Third, Respondent showed that he was physically and mentally capable of properly reporting, despite some of his medical diagnoses. Finally, Respondent's simple denial that his wife lived with him and his explanation that he did not know where his wife lived is not a justifiable explanation for his failure to report. Respondent's contention that his spouse committed fraud when she, on multiple occasions, falsely reported that she lived in Respondent's household, is not persuasive.

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.

In this matter, the Department, as shown above, has demonstrated that Respondent received an OI of AHH benefits. According to BAM 700, the Department may recoup this OI.

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** established that Respondent committed an IPV by clear and convincing evidence.
2. Respondent **did** receive an OI of AHH benefits in the amount of \$ [REDACTED]

IT IS ORDERED THAT the Department may initiate recoupment procedures for the amount of \$ [REDACTED] in accordance with Department policy.

CP/las



C. Adam Purnell
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

Petitioner

[REDACTED]

DHHS

[REDACTED]

[REDACTED]

Respondent

[REDACTED]