



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: May 19, 2016
MAHS Docket No.: 15-010936
Agency No.: [REDACTED]

[REDACTED]

ADMINISTRATIVE LAW JUDGE: Robert J. Chavez

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 March 17, 2016, from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). The Respondent was represented by himself. Also appearing was [REDACTED] as a witness for the Respondent.

ISSUES

1. Did Respondent receive an overissuance (OI) of Adult Service Program (ASP) 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 June 30, 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 ASP benefits issued by the Department.
4. The Department's OIG indicates that the time period it is considering the fraud period is July 1, 2011 through March 31, 2012.
5. During the fraud period, Respondent was issued [REDACTED] in ASP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
6. The Department alleges that Respondent received an OI in ASP benefits in the amount of [REDACTED].
7. This was Respondent's first alleged IPV.
8. 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 Adult Services Program (ASP), which provides for Adult Home Health (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 Human Service (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.

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 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 (2014), p. 1; ASM 165 (2015).

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 (2015); BAM 720 (2015).

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.

In this case, the Department has not met their burden of proof to show by clear and convincing evidence that Respondent committed a program violation.

The Department alleges that Respondent kept ASP payments meant for a caregiver and did not actually employ the caregiver in question. The sole exhibit in support of this, Department Exhibit 3, is a typed letter from a person alleging to be the caregiver in

question. This document is given no weight; it is unverified, not subject to cross-examination, and casts undocumented allegations on the Respondent with no real way to refute said allegations. In short, the undersigned has no way to verify its authenticity and thus must give it no weight in this decision.

Even if it were given weight, respondent denied all allegations contained therein; as such, the undersigned cannot make a determination as to which statement should be given more weight, as there is nothing, in either case to make a determination upon.

The Department has the burden of proof to show Intentional Program Violation by clear and convincing evidence; a single typewritten letter in no way reaches this threshold.

As such, the undersigned declines to find an IPV or OI in the current matter, as the allegations in question are not supported in anyway by the evidence file.

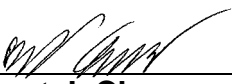
DECISION AND ORDER

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 not receive an OI of program benefits in the amount of [REDACTED] from the Adult Services Program.

The Department is ORDERED to delete the OI and cease any recoupment action.

RC/tm



Robert J. Chavez
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

DHHS

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]