



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: April 12, 2017  
MAHS Docket No.: 16-015736  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED] [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" or "MDHHS"), 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 29, 2017, from Lansing, Michigan. [REDACTED] [REDACTED] Regulation Agent of the Office of Inspector General (OIG), represented the Department. Respondent did not appear at the hearing and it was held in Respondent's absence pursuant to 7 CFR 273.16(e), Mich Admin Code R 400.3130(5), or Mich Admin Code R 400.3178(5).

### **ISSUES**

1. Did Respondent receive an overissuance (OI) of Medical Assistance (MA) 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. The Department's OIG requested a hearing on September 16, 2016, to establish that Respondent received an OI of benefits as a result of having allegedly committed an IPV.
2. The OIG has **not** requested that Respondent be disqualified from receiving program benefits.

3. Respondent applied for and received MA benefits issued by the Department. [Exhibit 1, pp. 11-19, 31-32].
4. Respondent was aware of the responsibility to report changes as required by applicable Department policy and/or law. [Exh. 1, pp. 11-19].
5. Respondent intentionally failed to timely and properly report to the Department the correct amount of household income. Respondent did not report that she began working and received earned income from her employment at [REDACTED] and [REDACTED]. [Exh. 1, pp. 23-26, 27-28].
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 from May 1, 2016, to June 30, 2016 (fraud period).
8. During the alleged fraud period, Respondent was issued and used \$ [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. [Exh. 1, pp. 31-32].
9. The Department contends that Respondent received an OI in MA benefits in the amount of \$ [REDACTED] [Exh. 1, pp. 31-32].
10. 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 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 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 Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

## **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) (10-1-2015), p. 36.

The OIG represents the MDHHS during the hearing process for IPV hearings. OIG requests IPV hearings when no signed DHS-826 or DHS-830 is obtained, and correspondence to the client is not returned as undeliverable, or a new address is located. **Exception:** For FAP only, OIG will pursue an IPV hearing when correspondence was sent using first class mail and is returned as undeliverable. BAM 720 (1-1-2016), p. 12. [Emphasis in original].

The OIG requests IPV hearings for cases involving:

1. FAP trafficking overissuances that are not forwarded to the prosecutor.
2. 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.

See BAM 720, p. 12.

IPV is suspected when there is clear and convincing evidence that the client or CDC provider 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).

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 720, p. 1. [Emphasis in original].

#### Clear and Convincing Evidence

The Department has the burden of establishing by clear and convincing evidence that the Respondent committed an Intentional Program Violation (IPV). BAM 720, p. 1. 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.*

In this case, the Department alleges that Respondent committed an IPV when she failed to timely and properly report a change in household income in order to receive an OI of MA benefits. Respondent did not appear at the hearing.

The goal of the Medicaid program is to ensure that essential health care services are made available to those who otherwise could not afford them. Medicaid is also known as Medical Assistance (MA). The Medicaid program comprise several sub-programs or categories. To receive MA under an SSI-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. BEM 105 (7-1-2016), p. 1.

In general, the terms Group 1 and Group 2 relate to financial eligibility factors. For Group 1, net income (countable income minus allowable income deductions) must be at

or below a certain income limit for eligibility to exist. The income limit, which varies by category, is for nonmedical needs such as food and shelter. BEM 105, p. 1.

Department policy requires MA recipients to report changes in circumstances that potentially affect eligibility or benefit amount. BAM 105 (4-1-2016), pp. 10-11. Specifically, they must report changes in circumstances within 10 (ten) days after the client is aware of them. BAM 105, p 10. These changes include, but are not limited to, changes regarding: (1) persons in the home; (2) marital status; (3) address and shelter cost changes that result from the move; (4) vehicles; (5) assets; (6) child support expenses paid; (7) health or hospital coverage and premiums; or (8) child care needs or providers. BAM 105, pp. 10-11.

This Administrative Law Judge has carefully considered and weighed the testimony and other evidence in the record. The following is the Administrative Law Judge's findings based on the clear and convincing evidence on the whole record.

Here, the record shows that Respondent failed to timely and properly report that she had a change in employment and income during the alleged fraud period. The employment verification documentation contained in the record showed that Respondent was working at [REDACTED] and [REDACTED], during the alleged fraud period. (Exhibit 1, pp. 23-26, 27-28) Respondent failed to properly and timely report this change to the Department. Respondent was advised of her rights and responsibilities concerning program benefits. (Exhibit 1, pp. 11-19) Respondent's signature on the assistance application in this record certifies that she was aware of these rights and responsibilities. (Exhibit 1, pp. 11-19) Respondent had no apparent physical or mental impairment that limits her understanding or ability to fulfill these reporting responsibilities. This Administrative Law Judge finds that the clear and convincing evidence on the whole record shows that Respondent committed an IPV because she intentionally gave incomplete or inaccurate information needed to make a correct benefit determination.

### **Overissuance**

The Department must also show that Respondent received an overissuance (OI) of MA benefits. According to Department policy, when a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700, (1-1-2016) p. 1.

In this matter, the Department has shown that Respondent received an OI of MA benefits due to an IPV. [Exh. 1, pp. 31-32] Based on the above Findings of Fact and Conclusions of Law, the OI resulted because Respondent received \$ [REDACTED] in MA benefits, but was lawfully entitled to receive \$ [REDACTED] during the period indicated above. 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. Respondent did commit an IPV by clear and convincing evidence.
2. Respondent did receive an OI of MA 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.

IT IS SO ORDERED.

CAP/mc



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**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

**DHHS**

[REDACTED]

**Petitioner**

[REDACTED]

**Respondent**

[REDACTED]