



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

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Date Mailed: May 10, 2017
MAHS Docket No.: 16-014203
Agency No.: ██████████
Petitioner: OIG
Respondent: ██████████

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

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 ██████████ ██████████ from Detroit, Michigan. The Department was represented by ██████████, Regulation Agent of the Office of Inspector General (OIG). The Respondent appeared for the hearing with his wife, ██████████, and represented himself.

ISSUES

1. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV) of the Medical Assistance (MA) program?
2. Did Respondent receive an overissuance (OI) of MA benefits that the Department is entitled to recoup?

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 or around ██████████, 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 the Authorized Representative (AR) on his mother, [REDACTED] MA case.
4. [REDACTED] was a recipient of MA benefits issued by the Department.
5. Respondent was aware of the responsibility to accurately report his mother's income and assets.
6. The Department was not aware of Respondent having an apparent physical or mental impairment that would limit the understanding or ability to fulfill this responsibility.
7. The Department's OIG indicates that the time period it is considering the fraud period is [REDACTED], (fraud period).
8. During the fraud period, the Department alleges that it paid \$ [REDACTED] in MA benefits on Respondent's mother's behalf and that she 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. A Notice of Hearing was mailed to Respondent at the last known address and was not returned by the U.S. 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. .

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 (January 2016), pp. 7-8; BAM 720, p. 1.

For MA only, an IPV exists when the client/AR: is found guilty by a court; or signs a DHS-4350, IPV Repayment Agreement, **and** the prosecutor or the office of inspector general (OIG), authorizes recoupment in lieu of prosecution; **or** is found responsible for the IPV by an administrative law judge conducting an IPV or debt establishment hearing. BAM 720, p.2.

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 received an OI of MA benefits because he failed to accurately report his mother's retirement income on an application for Long Term Care (LTC) MA benefits. The Department asserted that as a result of the failure to accurately report the income, Respondent's mother was approved for LTC benefits with a monthly patient pay amount less than the amount that it should have been.

The Department provided documentation establishing that throughout the fraud period, Respondent's mother received monthly retirement pension income in the amount of \$ [REDACTED] as a surviving spouse. The Department also presented bank statements showing that the income was deposited to [REDACTED] account. (Exhibit A, pp. 20-23).

In support of its contention that Respondent committed an IPV, the Department presented Asset Declaration Patient and Spouse forms submitted to the Department on [REDACTED], and [REDACTED]. (Exhibit A, pp. 8-19). A review of the documents shows that Respondent, acting as his mother's Authorized Representative (AR) completed the forms on her behalf and further that the retirement pension income was not disclosed. (Exhibit A, pp. 8-20).

At the hearing, Respondent stated his father passed away in [REDACTED] and that a few months later, his mother began receiving a portion of the retirement pension income. Respondent confirmed that the retirement income was not disclosed on the forms submitted to the Department. Respondent stated that he was not aware that he was supposed to report the retirement income, and the failure to disclose was not deliberate.

The Department's evidence was sufficient to establish that Respondent was advised of the responsibility to accurately report his mother's circumstances as well as the penalties for failing to do so. Because Respondent failed to accurately report the retirement pension income, the Department's evidence establishes, by clear and convincing evidence that Respondent committed an IPV of the MA program.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. The Department alleged that due Respondent's failure to report income, his mother received an OI of MA benefits.

The Department may initiate recoupment of an MA OI only due to client error or IPV, not when due to agency error. BAM 710 (October 2015), p. 1. A client error OI occurs when the client received more benefits than entitled to because the client gave incorrect or incomplete information to the Department. BAM 700, p. 5. Because Respondent failed to timely report income, the error resulting in over issued MA benefits in this case was an IPV/client error. Therefore, the Department may seek to recoup the MA OI.

To establish an MA OI for cases where the alleged OI is due to unreported income or a change affecting need allowances: if there would have been a larger LTC, hospital or post eligibility patient-pay amount, the OI amount is the difference between the correct and incorrect patient pay amounts or the amount of the MA payments, whichever is less. BAM 710, pp. 1-2.

In this case, the Department testified that because the \$ [REDACTED] retirement pension income was not considered in [REDACTED] initial MA eligibility, she was approved for LTC MA coverage with a patient pay amount that was lower than it should have been. See BEM 546 (October 2013). The Department alleged that it paid \$ [REDACTED] in MA benefits on Respondent's mother's behalf and that after including the unreported income, she was entitled to \$ [REDACTED] in such benefits during this time period, resulting in an OI of MA benefits in the amount of \$ [REDACTED].

In support of the MA OI calculation, the Department presented Supplemental Security Income (SSI)-Related MA budgets for each month during the fraud period showing how the correct monthly patient pay amount was calculated. (Exhibit A, pp. 25-76). The Department also presented a Level of Care Summary showing the incorrect patient pay amounts. (Exhibit A, p. 77). A review of the evidence presented establishes that Respondent received an OI of MA benefits in the amount of \$ [REDACTED] which is the difference between the correct patient pay amounts and incorrect patient pay amounts. As such, the Department is entitled to recoup the 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 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, less any amounts already recouped/collected.



ZB/jaf

Zainab A. Baydoun
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]
[REDACTED]
[REDACTED]

Respondent

[REDACTED]
[REDACTED]
[REDACTED]

DHHS

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