



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, 2017
MAHS Docket No.: 17-000447
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

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 [REDACTED], from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG).

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 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 [REDACTED], 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 as there is no disqualification for an MA IPV.
3. Respondent was a recipient of Medical Assistance benefits issued by the Department.
4. Respondent was aware of the responsibility to report a change in circumstance including change of residency.
5. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The Department's OIG indicates that the time period it is considering the fraud period is [REDACTED], (fraud period).
7. During the fraud period, Respondent was issued \$ [REDACTED] in Medical Assistance benefits by the State of Michigan; and the Department alleges that Respondent was entitled to \$ [REDACTED] in such benefits during this time period.
8. The Department alleges that Respondent received an OI in MA benefits in the amount of \$ [REDACTED]
9. This was Respondent's **first** alleged IPV.
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. .

Effective January 1, 2016, the Department's OIG requests IPV hearings for the following cases:

- Willful overpayments of \$500 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 (1/1/16), pp. 12-13.

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 (October 2016), p. 1; BAM 720, p. 1.

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. 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 M Civ JI 8.01.

In this case the Department seeks an IPV for Respondent's failing to report that she no longer resided in Michigan. The Department presented evidence that the Respondent began using her FAP benefits issued by Michigan in the State of ██████ in ██████. In addition, a ██████ applied for benefits for the Respondent and her son in the state of ██████ on ██████, for March 2016 which case was still active in ██████ based upon an email from the ██████ DHS. Exhibit A, p. 14. The Respondent completed a redetermination for MA in ██████ indicating that she was residing in ██████ Michigan. There was no evidence presented to rebut that Respondent was residing in Michigan at that time. The Department also presented evidence that Respondent began using her Food Assistance in ██████ beginning ██████. Exhibit A, pp. 15-16. The Department presented no evidence that Respondent misrepresented any facts to the Department causing her to receive more benefits other than failing to report her absence from Michigan for more than 30 days. Clearly the Department established a failure to timely report; however, no permanency in the state of ██████ is established until application for benefits in ██████

For an MA IPV BAM 710 provides:

Initiate recoupment of an overissuance (OI) due to **client error or intentional program violation (IPV)**, **not** when due to **agency error** (see BAM 700 for definitions). Proceed as follows:

- Determine the OI period and amount.
- Determine the OI Type (client error or suspected IPV).
- Initiate recoupment of an OI due to client error. BAM 710, (October 1, 2015), p. 1.

For MA only BAM 720 provides:

IPV exists when the client/AR or CDC provider:

- 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

Based upon the evidence presented, the Department did not establish by clear and convincing evidence that the Respondent committed an IPV of her MA. At best, the evidence shows the Respondent failed to timely report her residence in ██████ but did not misrepresent her residency or address to the Department.

Disqualification

In this case the Department did not establish an IPV by Respondent as regards her Medical Assistance and in addition, no there is no disqualification in any event even if an IPV of MA had been bound.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1.

BAM 710 allows for the Department to initiate recoupment of an overissuance (OI) due to client error. BAM 700 defines client error as, **client error** occurs when the client received more benefits than they were entitled to because the client gave incorrect or incomplete information to the department. BAM 700, (October 2016), p. 7. In this case, the Department has established client error as the Respondent received MA benefits after beginning to receive other benefits in [REDACTED] and thus, was no longer a Michigan resident. In order to receive MA benefits, a person must be a Michigan resident. BEM 220. The evidence also established the Respondent never reported that she had moved, thus, causing her to receive benefits she was no longer entitled to receive. Department policy in BAM 105 requires: Other changes must be reported within 10 days after the client is aware of them. These include, but are **not** limited to, changes in:

- Persons in the home.
- Marital status.
- Address and shelter cost changes that result from the move.
- Vehicles.
- Assets.
- Child support expenses paid.
- Health or hospital coverage and premiums.
- Child care needs or providers. BAM 105, (October 1, 2016), p. 12

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. In this case, the Department has established client error as the Respondent never reported moving out of state and establishing residence in the state of [REDACTED] and thus, an overissuance of MA benefits is established that the Department is entitled to recoup.

The Department presented an MA capitation report indicating that the Department paid \$ [REDACTED] in MA premiums for the period [REDACTED]. Exhibit A, pp. 18-19.

All Programs

Repayment of an overissuance is the responsibility of:

- Anyone who was an eligible, disqualified, or other adult in the program group at the time the overissuance occurred. BEM 725 (January 2017), p. 1

Thus, based upon the foregoing evidence it is determined that the Respondent has established that it is entitled to recoup the MA overissuance in the amount of \$ [REDACTED]

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.

LMF/jaf



Lynn M. Ferris
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]