



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: July 21, 2017
MAHS Docket No.: 17-005029
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Denise McNulty

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 Lansing, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). The 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 Medicaid (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 requested recoupment of MA benefits received by Respondent.

3. Respondent was a recipient of MA benefits issued by the Department.
4. The Department alleged that Respondent was aware of the responsibility to report changes in residency within 10 days.
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. The Department alleges that during the fraud period, the Department paid \$[REDACTED] in MA benefits on behalf of Respondent and her minor child, and 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. Postal Service 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.

Pursuant to policy, to be eligible for MA benefits, a person must be a Michigan resident. BEM 220 (July 2014), p. 1. A Michigan resident is an individual who is living in Michigan except for a temporary absence. Residency continues for an individual who is temporarily absent from Michigan or intends to return to Michigan when the purpose of the absence has been accomplished. BEM 220 (July 2014), p. 2.

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 (10/1/14), p. 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 (May 2014), p. 7; 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, Respondent and her daughter were recipients of MA benefits. Respondent moved from Michigan to ██████ in ██████. They have resided full-time in ██████ since ██████. In support of its IPV case against Respondent, the Department presented: (i) testimony regarding Respondent's admission of out-of-state residence; (ii) application submitted on ██████; (iii) and written documentation from Respondent's employer indicating dates of employment in ██████ [Exhibit A, pp. 8-15.] Reportedly, Respondent indicated to the Department that initially she did not intend the move to ██████ to be permanent. However, the Department acknowledged that Respondent had not submitted any documentation to the Department alleging a Michigan address during the period she was residing in ██████ Respondent's failure to notify the Department that she had moved and established residency in another state was insufficient to show by clear and convincing evidence that she had intentionally withheld information concerning her change in residency for the purpose of maintaining MA eligibility in Michigan.

Under these circumstances, the Department has not established that Respondent committed an IPV concerning her MA case.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. In this case, the Department alleges that Respondent received an OI in MA benefits.

The Department alleges an MA overissuance during the MA fraud period due to client error. The Department's right to seek an MA OI is only available if the OI is 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. A change in a client's MA case due to a change in residency requires timely notice. See BAM 220 (April 2016), pp. 3-6). Because the alleged MA overissuance was due to Respondent's failure to timely report her change in residency, any MA OI resulted from client error. Therefore, the Department could seek a recoupment of an MA overissuance based on client error if an overissuance is established.

For an MA OI due to any reason other than unreported income or a change affecting the need allowances, the MA OI amount is the amount of the MA payments. BAM 710, p. 2. In this case, the Department presented a "report of capitation payments" showing the monthly insurance premiums the Department paid to provide MA coverage for all the eligible individuals in Respondent's household during this period (Exhibit A, pp.16-19). The sum of these expenses is \$ ██████.

Therefore, the Department is entitled to recoup and/or collect from Respondent an MA OI of \$ ██████ for ██████.

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 concerning MA.
2. Respondent **did** receive an OI of MA program benefits in the amount of \$ [REDACTED] for the period of [REDACTED].

The Department is ORDERED to initiate recoupment/collection procedures, in accordance with Department policy, for the MA OI amount of \$ [REDACTED] less any amounts that have already been recouped and/or collected, for the period of [REDACTED].



DM/jaf

Denise McNulty
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]
[REDACTED]
[REDACTED]

Respondent

[REDACTED]
[REDACTED]
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[REDACTED]
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