



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: October 20, 2017
MAHS Docket No.: 17-004360
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Gary Heisler

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 September 6, 2017, from [REDACTED] Michigan. The Department was represented by [REDACTED] Regulation Agent of the Office of Inspector General (OIG). Neither Respondent nor his Attorney, [REDACTED], appeared for the hearing. The Notice of Disqualification Hearing (MAHS-827) sent to Respondent was not returned as undeliverable. In accordance with 7 CFR 273.16(e), Mich Admin Code R 400.3130(5), or Mich Admin Code R 400.3178(5), and Bridges Administration Manual (BAM) 720 the hearing proceeded in Respondent's absence.

ISSUE

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

FINDINGS OF FACT

The Administrative Law Judge, based upon the clear and convincing evidence on the whole record, finds as material fact:

1. On April 24, 2014, Respondent submitted an Assistance Application (DHS-1171) for Medical Assistance (MA) benefits for his family. (Department Exhibit A pages 9-40) In the Job Income Information section of the application Respondent indicated that both he and his spouse received a salary from [REDACTED] but did

not indicate the frequency of the pay. Respondent's electronic signature of the application certified knowledge of reporting requirements as well as the conditions that constitute fraud/IPV and trafficking and the potential consequences. Respondent was approved for Medical Assistance (MA) under the Healthy Michigan Plan (HMP).

2. On June 22, 2015, filed Articles of Incorporation for [REDACTED]. Respondent is listed as President and the business was approved to conduct business under the name of [REDACTED].
3. On September 2, 2015, Respondent submitted a signed Redetermination (DHS-1010) for Healthy Michigan Plan (HMP) Medicaid. (Department Exhibit A pages 41-46) Section 9 – Assets on the form states “Report all assets if you are reapplying for cash assistance and/or food assistance. Report all assets if you are reapplying for health care based on age (over 64), blindness, disability, or you have a Medicaid deductible.” Respondent did not report his ownership interest in the [REDACTED]. In the Income Source section, Respondent listed a gross weekly salary of \$ [REDACTED] for himself and a gross weekly salary of \$ [REDACTED] for his spouse. The total gross annual income indicated would be \$ [REDACTED].
4. On February 22, 2016, Respondent signed the [REDACTED] 2015 U.S. Corporation Income Tax Return Form 1120. The form shows that the [REDACTED] taxable income was (-\$ [REDACTED]). The Form 1120 did state that the corporation paid out \$ [REDACTED] in salaries, wages and compensation to officers. The Corporation's 2015 tax filing included an Asset Acquisition Statement Form 8594 which shows that Respondent purchased the [REDACTED] on June 22, 2015 for \$ [REDACTED].
5. The Investigation Report (MDHHS-4652), (Department Exhibit A pages 3 & 4) states that the nature of the complaint is: [REDACTED] applied for and received Medical Assistance (MA) benefits and failed to report ownership of [REDACTED] violating Department of Health and Human Services Policy and Procedure BEM 503 – S Corporation (S-Corp) and Limited Liability Company (LLC) – Money received from an S-Corp or LLC is unearned income.
6. The Hearing Summary (MDHHS-3050) states: Agency is requesting recoupment of benefits due to customer failing to report ownership of his business, [REDACTED] [REDACTED].

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. .

Bridges Administration Manual (BAM) 720 Intentional Program Violation (10-1-2015) governs the Department's actions in this case. OIG requests IPV hearing for cases involving:

1. FAP trafficking over-issuances 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 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.

INTENTIONAL PROGRAM VIOLATION

BAM 720 states that a 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.

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. In other words, the Department must show that the Respondent engaged in a fraudulent act or omission they knew would result in receiving assistance they were not eligible for.

In this case, it is unclear what the Department alleges as an Intentional Program Violation (IPV). The Summary/Conclusion section of the Investigation Report (MDHHS-4652), (Department Exhibit A pages 3 & 4) states:

The subject [REDACTED], requested and received Medical Assistance for his household and failed to report ownership of [REDACTED] on the DHHS 1171 - Application for Assistance signed April 24, 2014 and DHHS - Redetermination signed on August 24, 2015. The subject failed to inform the Department of Health and Human Services of his ownership of [REDACTED] which he acquired in June 2015. Subject submitted self-disclosed business tax records which show yearly revenue exceeding \$ [REDACTED] in 2015 and \$ [REDACTED] in 2016 causing total ineligibility for Medical Assistance.

[REDACTED] is not an S Corporation or a Limited Liability Corporation. Respondent's ownership of the [REDACTED] [REDACTED] [REDACTED] are assets. Respondent reported the salaries he and his spouse received on the August 24, 2015 Redetermination (DHS-1010). In accordance with the Redetermination (DHS-1010) form itself, he was not required to report all his assets. The HMP Medical Assistance (MA) Respondent's family was receiving, does not have an asset limit.

The Department has failed to present clear and convincing evidence that Respondent committed an Intentional Program Violation (IPV).

OVER-ISSUANCE

Bridges Administration Manual (BAM) 710 Recoupment of MA Over-Issuances provides:

Initiate recoupment of an over-issuance (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.

While the Department has not established that an Intentional Program Violation (IPV) was committed, fully addressing this hearing request requires a determination of whether or not a Medical Assistance (MA) over-issuance occurred. In order for there to be an over-issuance, it must be shown that she was not eligible for Medical Assistance (MA) benefits.

The evidence in this record states "Subject submitted self-disclosed business tax records which show yearly revenue exceeding \$ [REDACTED] in 2015 and \$ [REDACTED] in 2016 causing total ineligibility for Medical Assistance." The allegation promotes that the [REDACTED] revenues were Respondent's personal income.

[REDACTED] is not an S Corporation or a Limited Liability Corporation. Respondent's ownership of the [REDACTED] are assets and the HMP Medical Assistance (MA) Respondent was receiving does not have an asset limit. Respondent reported the salaries he and his spouse received on the August 24, 2015 Redetermination (DHS-1010). The [REDACTED] tax returns are included in evidence and do not indicate that Respondent's household received any more income than reported on the August 24, 2015 Redetermination (DHS-1010).

The evidence in this record does not show that Respondent's household was not eligible for HMP Medical Assistance (MA) benefits due to excess income. Further, even if Respondent's household had excess income, any Medical Assistance (MA) over-issuance would be Agency Error because he reported his income. BAM 710, cited above states that MA over-issuances caused by Agency Error are not recouped.

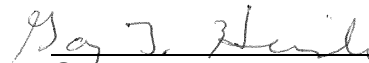
DECISION AND ORDER

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. The Department **has not** established that Respondent received a Medical Assistance (MA) over-issuance.

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

GH/nr



Gary Heisler
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]

Counsel for Petitioner

[REDACTED]