



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR



Date Mailed: October 27, 2017
MAHS Docket No.: 17-010432
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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 with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, telephone hearing was held on October 02, 2017, from [REDACTED] Michigan. The Department was represented by [REDACTED] Regulation Agent of the Office of Inspector General (OIG). Respondent had requested that he be permitted to participate in the hearing by telephone. Respondent's request was granted. On October 2, 2017, all calls to the telephone number Respondent provided went unanswered. Therefore, the hearing 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 the 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. On March 27, 2015, the Department received Respondent's completed Redetermination (DHS-1010) form where he acknowledged his duties and responsibilities including his duty to report starting employment and increases in earned income. Exhibit A, pp 10-15.

2. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
3. Respondent acknowledged under penalties of perjury that his redetermination form, received by the Department on March 27, 2015, was examined by or read to him/her, and, to the best of his/her knowledge, contained facts that were true and complete. Exhibit A, pp 10-15.
4. On April 20, 2015, the Department notified Respondent that he was approved for ongoing Medical Assistance (MA) benefits effective April 1, 2015. Exhibit A, pp 16-18.
5. Respondent failed to report to the Department that he started employment and received earned income on October 16, 2015. Exhibit A, pp 23-24.
6. Respondent failed to report to the Department that he started other employment on October 15, 2015, and received earned income from October 23, 2015, through December 24, 2015. Exhibit A, pp 25-27.
7. Respondent failed to report to the Department that he started other employment on December 21, 2015, and received earned income from December 26, 2015, through April 23, 2016. Exhibit A, pp 28-29.
8. Respondent's gross monthly earned income exceeded 133% of the federal poverty level from October 1, 2015, through February 28, 2016. Exhibit A, pp 23-29.
9. Respondent received Medical Assistance (MA) from December 1, 2015, through February 28, 2016, with a value of \$ [REDACTED] Exhibit A, pp 19-21.
10. On July 6, 2017, the Department sent the Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$ [REDACTED] overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 6-7.
11. The Department's OIG filed a hearing request on July 6, 2017, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 3.
12. This was Respondent's first established IPV.
13. A notice of hearing was mailed to Respondent at the last known address and was not returned by the United States Postal Service as undeliverable.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

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.

The Department's OIG requests IPV hearings for the following cases:

- FAP trafficking OIs 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 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.

Department of Health and Human Services Bridges Administrative Manual (BAM) 720 (January 1, 2016), pp 12-13.

Overissuance

When a client group receives benefits than they are entitled to receive, the Department must attempt to recoup the overissuance. Department of Health and Human Services Bridges Administrative Manual (BAM) 700 (October 1, 2016), p 1.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount within 10 days of receiving the first payment reflecting the change. Changes that must be reported include starting employment and increases in earned income.

Department of Human Services Bridges Assistance Manual (BAM) 105 (October 1, 2017), pp 1-20.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. Changes must be reported within 10 days of receiving the first payment reflecting the change. MA recipients must report a change in gross monthly income of more than \$█ since the last reported change. Department of Health and Human Services Bridges Administrative Manual (BAM) 105 (April 1, 2016), pp 11-12. The Department will act on a change reported by means other than a tape match within 15 workdays after becoming aware of the change, except that the Department will act on a change other than a tape match within 10 days of becoming aware of the change. Department of Health and Human Services Bridges Administrative Manual (BAM) 220 (April 1, 2016), p 7. A pended negative action occurs when a negative action requires timely notice based on the eligibility rules in this item. Timely notice means that the action taken by the department is effective at least 12 calendar days following the date of the department's action. BAM 220, p 12.

MA-only eligibility is determined on a calendar month basis. Unless policy specifies otherwise, circumstances that existed, or are expected to exist, during the calendar month being tested are used to determine eligibility for that month. When determining eligibility for a future month, assume circumstances as of the processing date will continue unchanged unless you have information that indicates otherwise. Department of Human Services Bridges Eligibility Manual (BEM) 105 (January 1, 2016), p 2.

Department policy is consistent with federal regulations under 42 CFR § 435.603(h) that state:

Financial eligibility for Medicaid for applicants, and other individuals not receiving Medicaid benefits at the point at which eligibility for Medicaid is being determined, must be based on current monthly household income and family size.

On March 27, 2015, the Department received Respondent's completed Redetermination (DHS-1010) form where he acknowledged his duties and responsibilities including his duty to report starting employment and increases in earned income. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Respondent acknowledged under penalties of perjury that his March 27, 2015, redetermination form was examined by or read to him, and, to the best of his knowledge, contained facts that were true and complete. Respondent did not report any income on his March 27, 2015, Redetermination form.

Respondent failed to report the earned income he received from two different employers in October of 2015, which represented more than a \$█ increase in gross monthly income. If Respondent had reported the earned income he received in October of 2015, then the Department would have redetermined his eligibility for ongoing MA benefits by the benefit period after November 16, 2017.

Respondent's employment ended in December of 2015, but he started other employment that was also not reported to the Department. In December of 2015, Respondent received a gross monthly income of \$ [REDACTED]. In January of 2016, Respondent received a gross monthly income of \$ [REDACTED]. In February of 2016, Respondent received a gross monthly income of \$ [REDACTED].

The income limit to participate in the Healthy Michigan Plan (HMP) is 133% of the federal poverty level. Department of Health and Human Services Reference Table Manual (RFT) 246 (April 1, 2014), p 1.

From December 1, 2015, through February 28, 2016, Respondent's gross monthly income exceeded 133% of the federal poverty level for a group of one, which was \$ [REDACTED]. The MA group size for HMP benefits is determined by Respondent's tax filing status and not household status.

If the Department had redetermined Respondent's eligibility for ongoing MA benefits as of December 1, 2015, the Department would have closed Respondent's benefits based on his earned income. Respondent received MA benefits with a value of \$ [REDACTED] from December 1, 2015, through February 28, 2016. In March of 2016, Respondent's gross monthly income was less than 133% of the federal poverty level.

Since Respondent was not eligible for the MA benefits he received from December 1, 2015, through February 28, 2016, he received a \$ [REDACTED] overissuance of MA benefits.

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, 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).

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

Respondent acknowledged his duties and responsibilities including his duty to report increases of earned income more than \$ [REDACTED]. Respondent failed to report starting employment in October of 2015, and again in December of 2015. If Respondent had reported his earned income to the Department, his benefits would have been closed, which resulted in an overissuance of MA benefits.

This Administrative Law Judge finds that the Department has presented clear and convincing evidence that the Respondent intentionally failed to report his earned income to the Department for the purposes of maintaining his eligibility for MA benefits that he would not have been eligible for otherwise.

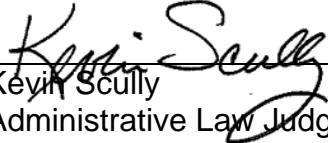
The record evidence indicates that this is Respondent's first established IPV violation.

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 Medical Assistance (MA) benefits in the amount of \$ [REDACTED]
3. The Department is ORDERED to initiate recoupment procedures for the amount of \$ [REDACTED] in accordance with Department policy.

KS/nr



Kevin Scully
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]