



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

[REDACTED]

Date Mailed: February 14, 2018  
MAHS Docket No.: 17-011872  
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 January 17, 2018, from [REDACTED] Michigan. The Department was represented by [REDACTED] [REDACTED] Regulation Agent of the Office of Inspector General (OIG). Respondent represented himself.

**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. On an application for assistance sent to the Department through the Federally Facilitated Marketplace dated March 1, 2014, Respondent acknowledged his duties and responsibilities including the duty to report all countable income to the Department. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 10-23.
2. On his March 1, 2014, application for Medical Assistance (MA), Respondent attested that the information provided was truthful. Exhibit A, p 33.

3. Respondent reported that he was not self-employed but that he was receiving wages, salaries, tips, and commissions in the monthly amount of \$ [REDACTED] on his March 1, 2014, application for Medical Assistance (MA). Exhibit A, pp 19-20.
4. On an application for assistance sent to the Department through the Federally Facilitated Marketplace dated December 13, 2014, Respondent acknowledged his duties and responsibilities including the duty to report all countable income to the Department. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 24-38.
5. On his December 13, 2014, application for Medical Assistance (MA), Respondent attested that the information provided was truthful. Exhibit A, p 35.
6. Respondent reported that he was not self-employed but that he was receiving wages, salaries, tips, and commissions in the monthly amount of \$ [REDACTED] on his December 13, 2014, application for Medical Assistance (MA). Exhibit A, pp 32-33.
7. Respondent acknowledged under penalties of perjury that his Redetermination (DHS-1010) form received by the Department on January 22, 2015, was examined by or read to him, and, to the best of his knowledge, contained facts that were true and complete. Exhibit A, pp 39-47.
8. Respondent reported to the Department on his January 22, 2015, Redetermination (DHS-1010) that he was employed at a rate of \$ [REDACTED] per hour for 10 hours per week. Exhibit A, p 44.
9. Respondent is listed as the resident agent for [REDACTED], a [REDACTED] [REDACTED] registered with the state of Michigan as of February 24, 2014. Exhibit A, p 48.
10. [REDACTED] is registered as a [REDACTED] with the State of Michigan. Exhibit A, pp 49-50.
11. On March 24, 2016, the Department received a copy of Respondent's 2014 Form 1120S, US Income Tax Return for an [REDACTED] where he reported gross annual receipts of \$ [REDACTED] from [REDACTED]. Exhibit A, pp 51-57.
12. Respondent's 2014 Form 1120S, US Income Tax Return for an [REDACTED] indicates that he is the sole owner of [REDACTED]. Exhibit A, p 57.
13. Respondent's 2015 Form 1120S, US Income Tax Return for an [REDACTED] indicates that he reported gross annual receipts of \$ [REDACTED] Exhibit A, pp 61-68.

14. Respondent's 2015 Form 1120S, US Income Tax Return for an [REDACTED] indicates that he is the sole owner of [REDACTED]. Exhibit A, p 66.
15. Respondent's 2015 City of Detroit Income Tax Corporation Return (D-1120) indicates that he reported taxable income before net operating loss deduction and special deductions attached 1120S as filed with IRS of \$ [REDACTED] Exhibit A, pp 69-70.
16. Respondent received Medical Assistance (MA) benefits with a value of \$ [REDACTED] from March 1, 2014, through December 31, 2015.
17. On July 25, 2017, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$ [REDACTED] overpayment. Exhibit A, pp 6-7.
18. The Department's OIG filed a hearing request on July 25, 2017, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 3.
19. 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 all countable income and assets. Department of Human Services Bridges Assistance Manual (BAM) 105 (October 1, 2017), pp 1-20.

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.

The Income limit for a child age 1-19 under the MA-U19 program is 160% of the federal poverty level. Department of Health and Human Services Modified Adjusted Gross Income (MAGI) Related Eligibility Manual, p 2.

MAGI for purposes of Medicaid eligibility is a methodology which state agencies and the federally facilitated marketplace (FFM) must use to determine financial eligibility. It is based on Internal Revenue Service (IRS) rules and relies on federal tax information to determine adjusted gross income. It eliminates asset tests and special deductions or disregards. Every individual is evaluated for eligibility based on MAGI rules. The MAGI rules are aligned with the income rules that will be applied for determination of eligibility for premium tax credits and cost-sharing reductions through exchanges. Department of Health and Human Services Bridges Eligibility Manual (BEM) 500 (January 1, 2016), pp 3-4.

Modified adjusted gross income (MAGI) is a methodology for how income is counted and how household composition and family size are determined. It is based on federal tax rules for determining adjusted gross income. It eliminates asset tests and special deductions or disregards. Every individual is evaluated for eligibility based on MAGI rules. The MAGI rules are aligned with the income rules that will be applied for determination of eligibility for premium tax credits and cost-sharing reductions through exchanges. The 5% disregard is the amount equal to 5% of the Federal Poverty Level for the applicable family size. It is not a flat 5% disregard from the income. The 5% disregard shall be applied to the highest income threshold. The 5% disregard shall be applied only if required to make someone eligible for Medicaid.<sup>1</sup>

Household income is the sum of the MAGI-based income of every individual included in the individual's household, minus an amount equivalent to 5 percentage points of the Federal poverty level for the applicable family size. 42 CFR 435.603.

Respondent applied for Medical Assistance (MA) on applications sent to the Department through the Federally Facilitated Marketplace on March 1, 2014, and December 13, 2014. Respondent was approved for MA benefits under the Health Michigan Plan (HMP) and his minor children were approved under the MA-U19 program. Respondent was approved for MA benefits and received MA benefits with a value of \$ [REDACTED] from March 1, 2014, through December 31, 2015.

The Department's representative testified that Respondent failed to report that he is the sole owner of [REDACTED] and that he failed to truthfully and accurately report the income he receives from that business resulting in an overissuance of MA benefits.

Respondent's assets are not an eligibility factor for HMP or MA-U19 benefits.

The Department's representative testified that Respondent's countable income that should have been reported as self-employment income from [REDACTED] was his total proceeds from that business minus allowable expenses of producing the income or 25% of the total proceeds. The Department's representative cited BEM 502 as his authority for making that determination.

However, BEM 502 is not relevant to Respondent's eligibility for MA for two reasons. BEM 502 does not apply to income from businesses organized as limited liability corporations, which [REDACTED] is registered as with the State of Michigan. Eligibility for MA under the HMP and MA-U19 programs is not determined from self-employment income under BEM 502 but is determined from MAGI.

In this case, the Department determined that the gross receipts reported on Respondent's 2014 Form 1120S of \$ [REDACTED] exceed 133% of the federal poverty level while he was able to become eligible for MA benefits by reporting earned income of

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<sup>1</sup> Department of Health and Human Services Modified Adjusted Gross Income (MAGI) Related Eligibility Manual, pp 14-15. This manual is available on the internet at [http://www.michigan.gov/documents/mdch/MAGI\\_Manual\\_457706\\_7.pdf](http://www.michigan.gov/documents/mdch/MAGI_Manual_457706_7.pdf)

\$ [REDACTED] on his December 13, 2014, federal marketplace application. The Department's representative argues that Respondent failed to report the income he received from [REDACTED] for the purposes of becoming eligible for HMP and MA-U19 benefits that he would not have been eligible for otherwise.

The Department counts the income a client receives from an S-Corp or LLC as wages, even if the client is the owner. Department of Human Services Bridges Eligibility Manual (BEM) 501 (January 1, 2014), p 4. In this case, Respondent reported wages, salaries, tips, and commissions in the monthly amount of \$ [REDACTED] on his December 13, 2014, application for MA benefits through the Federally Facilitated Marketplace.

Eligibility for HMP or MA-U19 benefits is determined from MAGI, which is determined from adjusted gross income (AGI). If a group's attested income is below the income threshold for the program being tested and trusted date source also validates income below the income threshold, the no reasonable compatibility test is performed, and applicant is eligible. If the group's attested income is below the income threshold for the program being tested but the trusted data source indicates above the income threshold, then if income is reasonably compatible, then applicant is eligible. If the income is not reasonably compatible, the program pends, and the individual is required to provide proof of attested income. See MAGI Manual, p 15.

An appropriate document that could be used to verify Respondent's AGI would be his 2014 Form 1040 federal tax return. It cannot be determined from the hearing record whether Respondent was approved for MA benefits based on his attested income or from additional verification sent along with his March 1, 2014, or December 13, 2014, Federally Facilitated Marketplace applications. The number of tax dependents reported to the IRS is also not clear from the record evidence but would have been listed on the Form 1040. This Administrative Law Judge finds that a group of five with a monthly income of \$ [REDACTED] the equivalent of a \$ [REDACTED] annual income, is less than 133% of the federal poverty level after the 5% income disregard is removed.

The record evidence does not support a finding that Respondent's income from March 1, 2014, through December 31, 2015, exceeded 133% of the federal poverty level. Respondent's December 13, 2014, application form indicates that the group is receiving a MAGI of \$ [REDACTED] of the federal poverty level but does not indicate whether this was the attested level of income or whether this income level was reasonably compatible. Whether Respondent's AGI was reduced by losses carried over from a previous tax year, which is permitted by the IRS, or by some other permissible methodology cannot be determined from the Form 1120S, but the Department has the burden of establishing that Respondent's MAGI caused him to be ineligible for MA benefits.

Since the Department has not established that Respondent was not eligible for MA benefits, the Department has not established that Respondent has received an overissuance of MA benefits.

The Department has failed to establish an Intentional Program Violation (IPV).

**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:

The Department **HAS NOT** established by clear and convincing evidence that Respondent committed an IPV. The Department is **ORDERED** to delete the OI and cease any recoupment action.

KS/nr

  
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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]

[REDACTED]

[REDACTED]

[REDACTED]

**Petitioner**

[REDACTED]

**Respondent**

[REDACTED]