



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: February 16, 2018
MAHS Docket No.: 17-013416
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

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, 42 CFR 431.230(b), 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 February 7, 2018, 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?

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 August 30, 2017, to establish an OI of MA benefits received by Respondent.
2. The OIG has **not** requested that Respondent be disqualified from receiving program benefits.

3. Respondent was a recipient of MA benefits issued by the Department.
4. Respondent was aware of the responsibility to report residency.
5. The Department was not aware of Respondent having an apparent physical or mental impairment that would limit the understanding or ability to fulfill this responsibility.
6. The Department's OIG indicates that the time period it is considering the fraud period (fraud period) is February 1, 2017 through June 30, 2017.
7. The Department alleges that during the fraud period the Department paid [REDACTED] in MA benefits on behalf of Respondent, but Respondent was not entitled to any MA benefits.
8. The Department alleges that Respondent received an OI in MA benefits in the amount of [REDACTED].
9. A notice of hearing was mailed to Respondent at the last known address and was not returned by the US 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 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 (January 2016), p. 5.

An IPV results in a client's disqualification from program benefit recipients other than MA; there is no disqualification for an MA IPV. BAM 720, pp. 15-16.

In this case, the Department alleges that Respondent was overissued MA benefits. Department policy provides that the Department may initiate recoupment of an MA OI due to client error or IPV, not when due to agency error. BAM 710 (October 2016), 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. An IPV is suspected when there is 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.

The Department alleges that there was an MA overissuance due to client error or IPV because Respondent failed to report his change in residence and, as a result, he lacked Michigan residency for MA eligibility. To be eligible for MA coverage through the Department, a person must be a Michigan resident. BEM 220 (January 2016), p. 1. For MA purposes, a Michigan resident is an individual who is living in Michigan except for a temporary absence. BEM 220, p. 2. 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, p. 2.

To establish an IPV or client error due to lack of residency, the Department presented evidence that Respondent began employment in [REDACTED] on January 9, 2017 and reported a [REDACTED] address to the employer. The Department also testified that a conversation was held with Respondent in which he acknowledged he moved to [REDACTED] in December 2016. The Department's evidence that Respondent had out-of-state employment and that he admitted to living in [REDACTED] was sufficient to establish that Respondent was no longer a Michigan resident during the fraud period. Because

Respondent was not a Michigan resident during the fraud period, he was not eligible for MA coverage through the State of Michigan. Therefore, the Department has established that any MA OI was due to client error or IPV.

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 an expenditure summary showing the total MA payments made by the Department on Respondent's behalf during the fraud period and a "report of capitation payments" showing the monthly insurance premiums the Department paid to provide Respondent with MA coverage during this period. The sum of these expenses is [REDACTED].


Therefore, the Department is entitled to recoup and/or collect from Respondent a MA OI of [REDACTED] for February 1, 2017 through June 30, 2017.

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 Respondent **did** receive an MA OI.

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

EM/cg



Ellen McLemore

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

Via Email:

[REDACTED]

Respondent – Via First-Class Mail:

[REDACTED]