



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: May 4, 2018
MAHS Docket No.: 17-014055
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, a telephone hearing was held on April 3, 2018, from Lansing, 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) and State Supplemental Security Income (SSP) 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 dated [REDACTED], Respondent acknowledged her duties and responsibilities including the duty to report any change of residency to the Department in a timely manner. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 10-14.

3. Respondent established her residency in the state of Illinois. Exhibit A, pp 24-41.
4. Respondent applied for Medicaid, food assistance, and cash assistance from the State of Illinois on [REDACTED], and reported an Illinois address as her present residence. Exhibit A, pp 24-41.
5. Respondent received Medicaid from the state of Illinois from [REDACTED], through [REDACTED]. Exhibit A, pp 15-23.
6. Respondent received food assistance and cash assistance from the state of Illinois from [REDACTED], through [REDACTED]. Exhibit A, pp 15-23.
7. Respondent received Medical Assistance (MA) benefits with a value of \$ [REDACTED] from [REDACTED], through [REDACTED]. Exhibit A, pp 42-44.
8. Respondent received State Supplemental Security Income (SSP) benefits totaling \$ [REDACTED] from [REDACTED], through [REDACTED]. Exhibit A, p 45.
9. On [REDACTED], the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$ [REDACTED] overpayment. Exhibit A, pp 6-7.
10. 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. Exhibit A, p 3.
11. This was Respondent's first established IPV.
12. 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 State SSI Payments (SSP) program is established by 20 CFR 416.2001-.2099 and the Social Security Act, 42 USC 1382e. The Department administers the program pursuant to MCL 400.10.

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.

To be eligible for MA benefits, a person must be a Michigan resident. A Michigan resident is an individual who is living in Michigan except for a temporary absence. To be eligible, a person must be a Michigan resident. Department of Health and Human Services Bridges Eligibility Manual (BEM) 220 (January 1, 2016), pp 1-2.

On an application for assistance dated February 11, 2015, Respondent acknowledged her duties and responsibilities including the duty to report any change of residency to the Department. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.

On [REDACTED], Respondent submitted an application for public benefits to the state of Illinois while claiming to reside in Illinois. Respondent failed to report leaving the state of Michigan or her intent to become a resident of Illinois.

Respondent received Medicaid from the state of Illinois while receiving duplicate MA benefits from the state of Michigan from November 1, 2015, through November 30, 2016. Respondent received food assistance and cash assistance from the state of Illinois from [REDACTED], through [REDACTED].

Respondent was not eligible for received MA benefits from Michigan while receiving concurrent Medicaid benefits from Illinois. Respondent not eligible to received SSP benefits funded by the state of Michigan while she was not a resident of Michigan.

Respondent received MA benefits with a value of \$ [REDACTED] issued by Michigan from [REDACTED] through [REDACTED]. Respondent received SSP benefits totaling \$ [REDACTED] from [REDACTED], through [REDACTED]. Respondent was not eligible for any of those benefits as a resident of Illinois and a concurrent recipient of Medicaid in Michigan and Illinois. Therefore, Respondent received a \$ [REDACTED] overissuance of MA benefits and a \$ [REDACTED] overissuance of SSP 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 the reporting responsibilities, and
- The client has no apparent physical or mental impairment that limits the understanding or ability to fulfill reporting responsibilities.

BAM 700, p 7, 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 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.*

On application for assistance dated [REDACTED], Respondent acknowledged her duties and responsibilities including the duty to report any change of residency to the Department. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Respondent failed to report becoming an Illinois resident on [REDACTED], which was established by her application for public assistance from the state of Illinois while claiming to reside at an Illinois address. As a result of Respondent's unreported change of residence to Illinois and her acceptance of benefits from Illinois concurrently with her Michigan benefits, Respondent received an overissuance of MA and SSP benefits.

This Administrative Law Judge finds that the Department has presented clear and convincing evidence that Respondent intentionally failed to report a change of residency to the Department for the purposes of becoming eligible for and maintaining eligibility for FAP benefits that she would not have been eligible for otherwise.

The Department has established 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:

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. Respondent did receive an OI of State Supplemental Security Income (SSP) benefits in the amount of \$ [REDACTED]
4. The Department is ORDERED to initiate recoupment procedures for the amount of \$ [REDACTED] in accordance with Department policy.

KS/hb



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

Petitioner

[REDACTED]

DHHS

[REDACTED]

Respondent

[REDACTED]