



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

[REDACTED]

Date Mailed: June 15, 2018
MAHS Docket No.: 18-002499
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [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 May 15, 2018, from Lansing, Michigan. The Department was represented by Rick Rafferty, 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?
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 an application for assistance dated April 22, 2016, Respondent acknowledged her duties and responsibilities including the duty to report changes of residency and the receipt of benefits from another state. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 9-28.

2. Respondent received Medical Assistance (MA) benefits with a value of \$771.30 from May 1, 2017, through July 31, 2017. Exhibit A, pp 64-65.
3. Respondent received Medicaid benefits from the state of Tennessee from May 1, 2017, through September 20, 2017. Exhibit A, p 54.
4. Respondent used Food Assistance Program (FAP) benefits exclusively in Tennessee from May 20, 2017, through October 31, 2017. Exhibit A, pp 52-53.
5. On March 16, 2018, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$771.30 overpayment. Exhibit A, pp 5-6.
6. The Department's OIG filed a hearing request on March 16, 2018, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 2.
7. 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.

Concurrent receipt of benefits means assistance received from multiple programs to cover a person's needs for the same time period. Benefit duplication means assistance received from the same (or same type of) program to cover a person's needs for the same month. Benefit duplication is prohibited except for MA and FAP in limited circumstances. Department of Health and Human Services Bridges Eligibility Manual (BEM) 222 (October 1, 2016), p 3.

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. Department of Health and Human Services Bridges Eligibility Manual (BEM) 220 (April 1, 2018), p 1.

A person cannot receive FAP in more than one state for any month. BEM 220.

On an application for assistance dated April 22, 2016, the Respondent acknowledged her duties and responsibilities including her duty to report any change of residency as well as the receipt of Medicaid from another state. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.

Respondent received MA benefits with a value of \$771.30 from May 1, 2017, through July 31, 2017. Respondent left Michigan with no apparent intent to remain a Michigan resident, which was shown by her exclusive use of FAP benefits in Tennessee from May 20, 2017, through October 31, 2017. Respondent applied for and received Medicaid in Tennessee. Respondent received Medicaid in Tennessee while concurrently receiving Michigan MA benefits from May 1, 2017, through July 31, 2017.

Respondent was not eligible for any MA benefits in months that she was receiving Medicaid from another state. Therefore, Respondent received a \$771.30 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 the reporting responsibilities, and
- The client has no apparent physical or mental impairment that limits the 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. 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 uncontested and yet not be clear and convincing. Conversely, evidence may be clear and convincing even if contradicted. *Id.*

Respondent acknowledged her duties and responsibilities including her duty to report any change of residency as well as the receipt of public benefits issued by another state. Respondent moved to Tennessee with no apparent intent to remain a Michigan, and received Medicaid in Tennessee concurrently to her Michigan MA benefits. Respondent's failure to report a change to her circumstances 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 receiving concurrent Medicaid to her Michigan MA benefits for the purposes of maintaining her eligibility for MA benefits that she would not have been eligible for otherwise.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 15-16. A disqualified recipient remains a member of an active group as long as he lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the OI relates to MA. BAM 720, p. 13. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (July 1, 2013), p. 2. Clients are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a FAP concurrent receipt of benefits. BAM 720, p. 16.

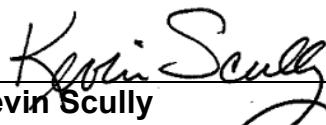
The Department has established an Intentional Program Violation (IPV).

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, 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 \$771.30.
3. The Department is ORDERED to initiate recoupment procedures for the amount of \$771.30 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) 763-0155; 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

OIG
PO Box 30062
Lansing, MI 48909-7562

DHHS

Vicki Dahl - 4
711 West Chisholm St.
Alpena, MI 49707

Alpena County, DHHS

Policy-Recoupment via electronic mail

M. Shumaker via electronic mail

Respondent

A large rectangular area of the page has been completely blacked out with a redaction marker, obscuring several lines of text that would normally be listed under the "Respondent" section.