



RICK SNYDER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

SHELLY EDGERTON  
DIRECTOR

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Date Mailed: August 9, 2018  
MAHS Docket No.: 18-002719  
Agency No.: ██████████  
Petitioner: OIG  
Respondent: ██████████

**ADMINISTRATIVE LAW JUDGE:** John Markey

**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 Title 42 of the Code of Federal Regulation (CFR), particularly 42 CFR 431.230(b). After due notice, a telephone hearing was held on August 7, 2018, from Lansing, Michigan. The Department was represented by Stephanie Avery, Regulation Agent of the Office of Inspector General (OIG). Respondent appeared and represented herself. During the hearing, 60 pages of documents were offered and admitted as Department's Exhibit A, pages 1-60.

**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 ██████████, 2016, Respondent applied for and was granted assistance from the Department, including MA benefits, with a group size of 4. Exhibit A, pages 18-47.

2. On the application, Respondent acknowledged her duty to report a change in circumstance affecting her eligibility for benefits, including starting or stopping employment. Exhibit A, page 30.
3. The application further informed Respondent that if she intentionally failed to report a change and received benefits to which she was not entitled, she could be disqualified from the programs and would have to pay back any benefits wrongfully received. Exhibit A, page 30.
4. On January 3, 2017, Respondent's husband and group-member, [REDACTED], obtained full-time employment with [REDACTED] making about [REDACTED] per month, plus other consideration. Exhibit A, pages 48-50.
5. Respondent timely reported the income change to the Department and believed that she was no longer participating in the program.
6. The Department, however, continued to issue MA benefits on behalf of Respondent. Exhibit A, pages 51-55.
7. The Department considers the payments made from March 1, 2017, through January 31, 2018, to be an overissuance in the amount of \$5,275.25. Exhibit A, pages 1-4.
8. The Department's OIG filed a hearing request on March 21, 2018, to establish an OI of MA benefits based on Respondent's alleged IPV. Exhibit A, page 1.
9. The Department is seeking to recoup MA benefits issued from March 1, 2017, through January 31, 2018, totaling \$5,275.25. Exhibit A, page 1.
10. Respondent did not have an apparent physical or mental impairment that would limit her understanding or ability to fulfill her reporting responsibilities.
11. This was Respondent's first alleged IPV.
12. A Notice of Hearing was mailed to Respondent at the last known address and was not returned by the United States Postal Services 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.

### **Intentional Program Violation**

The Department's policy in effect at the time of Respondent's alleged IPV defined an IPV as an overissuance in which the following three conditions exist: (1) the client intentionally failed to report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination; (2) the client was clearly and correctly instructed regarding his or her reporting responsibilities; and (3) the client has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill his or her reporting responsibilities. BAM 720 (January 1, 2016), page 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; see also 7 CFR 273.16(e)(6). Clear and convincing evidence is evidence which is so clear, direct, weighty, and convincing that it enables a firm belief as to the truth of the allegations sought to be established. *In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995) (citing *In re Jobes*, 108 NJ 394 (1987)). Clients must report obtaining new employment that potentially affects eligibility or benefit amount within 10 days of receiving the first paycheck. BAM 105 (April 1, 2016), pages 11-12.

In this case, the Department has not met its burden. The Department did not present sufficient evidence to establish by clear and convincing evidence that Respondent committed an IPV. Respondent was required to report the change in circumstances within 10 days of receiving the first paycheck, and the Department showed that Respondent was adequately instructed on that requirement. Further, she did not suffer from any apparent physical or mental impairment.

However, Respondent's credible and consistent testimony was sufficient to show that she in fact did report the change in circumstances. Because Respondent did not fail to report the information, there can be no intentional program violation based on the alleged failure. Furthermore, even if Respondent failed to report the change, it would more reasonably be considered a mistake as opposed to an IPV. Respondent had sufficient medical coverage through private insurance. Based on the record provided, there was no good reason for Respondent to continue to get MA benefits, so it would not make much sense for the Department to conclude that Respondent intentionally withheld the income information to obtain the MA benefits which were of little to no value to her at that point. Thus, Respondent did not commit an intentional program violation.

### **Overissuance**

An overissuance is the amount of benefits issued to the client group in excess of what it was eligible to receive. BAM 700 (October 1, 2016), page 1. Overissuances are categorized as agency error, client error, or as a result of an intentional program violation. BAM 700, pages 4-8. Overissuances caused by incorrect Department actions, such as failing to properly apply policy or available information, are considered agency errors. The Department does not pursue recovery of agency error overissuances concerning MA benefits. BAM 705 (January 1, 2016).

In this case, Respondent was not entitled to any MA benefits during the period from March 1, 2017, through January 1, 2018, as a result of her increased group income. Thus, the Department is correct in labeling that entire amount an overissuance. However, the Department is not entitled to collect any of that overissuance because it was caused by the Department's error. When Respondent reported that her husband had a new job and she no longer needed the Department's assistance, the Department should have stopped paying out MA benefits. The Department's failure to do so based on the information it had was agency error, and under BAM 705, the Department does not seek recovery of MA overissuances caused by agency error.

### **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 not established, by clear and convincing evidence, that Respondent committed an IPV.
2. The Department is not entitled to recover the overissuance of MA benefits in this matter.

IT IS ORDERED THAT the Department shall delete the alleged MA overissuance.



JM/dh

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**John Markey**  
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**

Raina Nichols  
22 Center Street  
Ypsilanti, MI 48198

Washtenaw County, DHHS

Policy-Recoupment via electronic mail

M. Shumaker via electronic mail

**Respondent**

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