



RICK SNYDER  
GOVERNOR

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

SHELLY EDGERTON  
DIRECTOR

[REDACTED] NC [REDACTED]

Date Mailed: September 18, 2018  
MAHS Docket No.: 18-003524  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE:** Vicki L. Armstrong

**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 August 23, 2018, from Lansing, Michigan.

The Department was represented by Thomas Lillienthal, Regulation Agent of the Office of Inspector General (OIG). Mr. Lillienthal testified on behalf of the Department. The Department submitted 44 exhibits which were admitted into evidence.

Respondent did not appear at the hearing in the above-captioned case. Respondent sent a letter asking that the Intentional Program Violation be corrected because she had not used Medicaid since leaving Michigan in November 2016. Two voice mails were left with Respondent on August 17, 2018, and August 21, 2018, giving Respondent the option of a telephone hearing. Respondent did not return either call. The hearing 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 Medicaid 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. The Department's OIG filed a hearing request on April 2, 2018, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. The OIG has not requested that Respondent be disqualified from receiving Medicaid benefits.
3. Respondent was a recipient of Medicaid benefits issued by the Department.
4. Respondent was aware of the responsibility to report changes in circumstance within 10 days as evidenced by her signature on her Assistance Application dated [REDACTED], 2015 and the redetermination, dated May 1, 2016. [Dept. Exh. 15; Dept. Exh. 38].
5. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. [Dept. Exh. 12; Dept. Exh. 34].
6. The Department's OIG indicates that the time period it is considering the fraud period is February 1, 2017 through February 28, 2018 (fraud period). [Dept. Exh. 4].
7. During the fraud period, Respondent was issued \$5,858.94 in Medicaid benefits by the State of Michigan, and the Department alleges that Respondent was entitled to -0- in such benefits during this time period. [Dept. Exh. 4].
8. The Department alleges that Respondent received an OI in Medicaid benefits in the amount of \$5,858.94. [Dept. Exh. 5, pp 41-43; Dept. Exh. 6, p 44].
9. On March 20, 2018, OIG Lilienthal interviewed Respondent by telephone. Respondent stated she was living in North Carolina and had moved to North Carolina from Michigan in approximately, December 2016. She admitted she had never closed out her Medicaid benefits in Michigan. [Dept. Exh. 3, p 39].
10. 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.

Effective October 1, 2017, the Department's Office of Inspector General requests Intentional Program Violation hearings for the following cases:

1. FAP trafficking overissuances that are not forwarded to the prosecutor.
2. Prosecution of welfare fraud or Food Assistance Program trafficking is declined by the prosecutor for a reason other than lack of evidence, and
  - The total amount for the Family Independence Program (FIP), State Disability Assistance (SDA), Child Development and Care (CDC), Medicaid (MA) and Food Assistance Program (FAP) programs combined is \$500 or more, or
  - The total amount is less than \$500, and
    - the group has a previous Intentional Program Violation, or
    - the alleged Intentional Program Violation involves Food Assistance Program 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, pp 12-13 (10/1/2017).

### **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 his or her reporting responsibilities, **and**
- The client has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill reporting responsibilities. BAM 720, p 1 (emphasis in original).

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 (emphasis in original); see also 7 CFR 273.16(e)(6). Clear and convincing evidence is evidence sufficient to result in a clear and firm belief that the proposition is true. See M Civ JI 8.01.

In the above captioned matter, the Department failed to submit evidence that Respondent intentionally withheld or misrepresented her move to North Carolina for the purpose of establishing, maintaining, increasing or preventing reduction of Medicaid benefits or eligibility. Respondent stated to the OIG that she did not use her Medicaid benefits in Michigan or North Carolina. Therefore, Respondent did not commit an IPV.

### **Overissuance**

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, p 1 (1/1/2018).

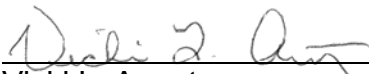
In this case, Respondent received Medicaid coverage while living in North Carolina, despite the fact that she never used the Medicaid coverage. Respondent was not eligible for Michigan Medicaid benefits because she had moved to North Carolina and was no longer living in Michigan. Therefore, Respondent received an overissuance of \$5,858.94 for the fraud period of February 1, 2017 through February 28, 2018.

**DECISION AND ORDER**

Based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, this Administrative Law Judge concludes that:

1. The Department has established by clear and convincing evidence that Respondent received an OI of Medicaid benefits in the amount of \$5,858.94.
2. The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$5,858.94 in accordance with Department policy.

VLA/nr

  
\_\_\_\_\_  
Vicki L. Armstrong  
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

**DHHS**

Kimberly Kornoelje  
121 Franklin SE  
Grand Rapids, MI  
49507

Kent County DHHS- via electronic mail

MDHHS- Recoupment- via electronic mail

M. Shumaker- via electronic mail

**Petitioner**

OIG  
PO Box 30062  
Lansing, MI  
48909-7562

**Respondent**

[REDACTED], NC