



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]
Date Mailed: March 28, 2019
MAHS Docket No.: 18-012297
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

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 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 March 18, 2019, from Detroit, Michigan. The Department was represented by [REDACTED] Regulation Agent of the Office of Inspector General (OIG). Respondent appeared at the hearing and represented herself. Interpretation services were provided by Respondent's interpreter of choice, Bushra Alamri. During the hearing, a 94-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-94.

ISSUES

1. Did Respondent receive an overissuance (OI) of Medicaid (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 [REDACTED] 2016, Respondent's husband filed with the Department an application for MA benefits. Exhibit A, pp. 9-40.

2. On the application to the Department, Respondent's husband indicated that the family lived in [REDACTED] Michigan. Exhibit A, p. 10.
3. By signing the application, Respondent's husband certified that he received, reviewed, and understood the information contained within the DHHS publication titled "Things You Must Do." Exhibit A, pp. 22-23.
4. "Things You Must Do" advised Respondent's husband that he was required to report any changes in address or moving out of the state of Michigan within 10 days and that an intentional failure to do so violated the law and if proven, would result in criminal and/or civil penalties, including disqualification from the program. Exhibit A, pp. 23-24.
5. Respondent's husband's application was approved, and the Department thereafter began providing MA coverage to Respondent's family. Exhibit A, pp. 93-94.
6. On March 31, 2017, Respondent signed a lease for an apartment in Indiana covering the term from April 1, 2017 through March 31, 2018. Exhibit A, pp. 88-92.
7. On [REDACTED] 2017, Respondent submitted to the State of Indiana an application for MA benefits for her family. Respondent signed the application, thereby certifying that the information contained therein was accurate. Exhibit A, pp. 48-86.
8. Nobody from Respondent's household reported the move to Indiana to the Department.
9. The Department's OIG filed a hearing request on November 19, 2018, to establish an overissuance of benefits received by Respondent as a result of Respondent having allegedly committed an IPV by receiving MA benefits from Michigan after moving out of state. Exhibit A, pp. 1-6.
10. This was Respondent's first alleged IPV. Exhibit A, pp. 1-6.
11. The Department's OIG indicates that the time period it is considering the fraud period is May 1, 2017 through March 31, 2018, during which the Department dispensed \$3,859.57 in MA benefits. Exhibit A, pp. 1-6, 93-94.
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), 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.

The Department's position in this matter is that Respondent's failure to report her move out of state while continuing to be covered by Michigan's MA amounted to an Intentional Program Violation (IPV) with respect to MA.

Overissuance

Only residents of Michigan are eligible to receive benefits from the Department. BEM 220 (January 2016), p. 1. When an ineligible client is issued benefits or an eligible client is issued more benefits than the client is entitled, the Department must attempt to recoup the OI. BAM 700 (January 2016), p. 1.

In this case, the Department showed by clear and convincing evidence that Respondent was an Indiana resident as of April 2017. Respondent acknowledged at the hearing that she became an Indiana resident at or near that time. Thus, Respondent was no longer a Michigan resident and was ineligible to receive benefits. However, because of Respondent's failure to report her move to Indiana, the Department paid out \$3,859.57 in MA benefits on Respondent's case. As Respondent was ineligible to receive those benefits, they are considered an overissuance. In total, the overissuance was \$3,859.57.

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 2016) 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. 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)).

In this case, the Department has not met its burden. Respondent was required to report changes in her circumstances to the Department within 10 days of the date of the change. BAM 105 (April 2016), pp. 11-12. The Department, however, failed to show that it clearly and correctly instructed Respondent to report changes to the Department within 10 days. Respondent did not apply for benefits in the State of Michigan; her husband did. Therefore, Respondent never received or acknowledged her duty to abide by the rules and regulations issued by the Department. When she applied in Indiana in 2017, she believed that it would automatically cause her Michigan-issued MA coverage to stop. She credibly testified to that fact, and it is a reasonable belief given that she was not given the information stating otherwise. Additionally, Respondent's inability to speak or understand English contributed to her lack of understanding regarding her rights and responsibilities. Thus, even though Respondent received benefits to which she was not entitled, she is not subject to an IPV sanction because she did not knowingly or intentionally violate any rules or regulations. Thus, Respondent did not commit an IPV with respect to her MA benefits.

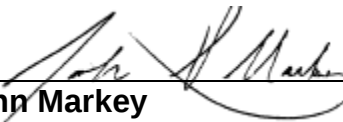
DECISION AND ORDER

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 paid an overissuance of MA benefits in the amount of \$3,859.57 that the Department is entitled to recoup and/or collect.
2. The Department has not established by clear and convincing evidence that Respondent committed an IPV with respect to her MA benefits.

IT IS ORDERED that the Department may initiate recoupment and/or collection procedures for the total overissuance amount of \$3,859.57 established in this matter less any amounts already recouped or collected.

JM/cg


John Markey
Administrative Law Judge
for Robert Gordon, 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

Via Email:

MDHHS- Wayne-17-Hearings
OIG Hearings
Recoupment
MAHS

Respondent – Via First-Class Mail:

[REDACTED]
[REDACTED]
[REDACTED]