



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

ORLENE HAWKS
DIRECTOR

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Date Mailed: January 11, 2019
MAHS Docket No.: 18-009428
Agency No.: ██████████
Petitioner: OIG
Respondent: ██████████

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, telephone hearing was held on December 12, 2018, from Lansing, Michigan. The Department was represented by Chris Tetloff, 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 Adult Home Help (AHH) 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 Adult Services Application (DHS-390) dated ██████████ ██████████ 2017, Respondent acknowledged the duties and responsibilities of receiving Adult Home Help (AHH) including the duty to give full and correct information about his situation and to report within 10 days any changes of his situation. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 10-11.

2. Respondent signed a Home Help Services Statement of Employment (MSA-4676) on March 10, 2017, designating [REDACTED] as his home help services provider. Exhibit A, p 12.
3. Respondent reported to the Department that he was not capable of performing any personal care activities without assistance and that he was non-ambulatory. Exhibit A, p 13.
4. On August 25, 2017, the Department received Service Verification forms where Respondent claimed to have received Adult Home Help (AHH) services on each day of June of 2017 and July of 2017 from Dorita L. Davis. Exhibit A, pp 14-15.
5. On July 11, 2017, the Department received a statement signed by [REDACTED], reporting that she would no longer provide services to Respondent. Exhibit A, p 16.
6. The Department issued Adult Home Help (AHH) benefits in the amounts of \$440.60 on July 20, 2017, and \$753.29 on June 15, 2017. Exhibit A, pp 17-18.
7. On June 30, 2017, Respondent publicly published a photograph of himself on the internet driving a car. Exhibit A, p 19.
8. On July 20, 2017, Respondent publicly published a statement on the internet that he was "Kinda liking the new JOB." Exhibit A, p 20.
9. On July 25, 2017, and August 1, 2017, Respondent publicly published photographs on the internet of himself working in a factory. Exhibit A, pp 21-22.
10. Respondent received earned income from employment in the third quarter of 2017 in the gross quarterly amount of \$2,532.26. Exhibit A, p 22-27.
11. On August 29, 2018, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$1,292.79 overpayment. Exhibit A, pp 6-7.
12. The Department's OIG filed a hearing request on August 29, 2018, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 3.
13. 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).

Independent living services (home help) is the Medicaid State Plan for personal care services in the home. The purpose of independent living services (ILS) is to provide a range of supportive and assistance related services to enable individuals of any age to live safely in the most independent setting of their choice. MDHHS policy for ILS is located in Adult Services Manual (ASM).

Home help services are non-specialized personal care service activities provided under the independent living services program to persons who meet eligibility requirements. ASM 101 (August 2016), p. 1. Home help services are provided to enable individuals with functional limitation(s), resulting from a medical or physical disability or cognitive impairment to live independently and receive care in the least restrictive, preferred settings. *Id.* Home help services are defined as those tasks which the department is paying for through Title XIX (Medicaid) funds. *Id.* These services are furnished to individuals who are not currently residing in a hospital, nursing facility, licensed foster care home/home for the aged, intermediate care facility (ICF) for persons with developmental disabilities, or institution for mental illness. *Id.*

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 more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. Department of Human Services Bridges Administrative Manual (BAM) 700 (January 1, 2018), p 1.

The record evidence supports a finding that Respondent's error was willful. Willful client overpayment occurs when all of the following apply: (i) a client reports inaccurate or incomplete information or fails to report information needed to make an accurate assessment of need for services; (ii) the client was clearly instructed regarding their reporting responsibilities to the Department (a signed DHS-390 is evidence of being clearly instructed); (iii) the client was physically and mentally capable of performing their reporting responsibilities; and (iv) the client cannot provide a justifiable explanation for withholding or omitting pertinent information. ASM 165, pp. 1-2. When willful overpayment of \$500 or more occur, a DHS-834, Fraud Investigation Request, to completed and sent to OIG; no recoupment action is permitted during the OIG investigation. ASM 165, p. 2. A non-willful client overpayment occurs when (i) the client is unable to understand and perform his/her reporting responsibilities to the Department due to physical or mental impairment or (ii) the client has a justifiable explanation for not giving correct or full information. ASM 165, pp. 2-3. All instances of non-willful client error must be recouped; no fraud referral is necessary. ASM 165, p. 3.

On an Adult Services Application (DHS-390) dated [REDACTED] [REDACTED] 2017, Respondent acknowledged the duties and responsibilities of receiving Adult Home Help (AHH), including the duty to give full and correct information about his situation and to report within 10 days any changes of his situation. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Respondent signed a Home Services Statement of Employment (MSA-4676) on March 10, 2017, designating Dorita L. Davis as his home help services provider.

Respondent reported to the Department that he received AHH services on each day in June and July of 2017, claiming that he was incapable of performing his daily life activities. Respondent had claimed to be non-ambulatory and that he required assistance to perform all of his personal care activities. The Department issued AHH benefits totaling \$1,292.79 as reimbursement for the services Respondent claimed to have received.

During the period Respondent claimed to be receiving home help services, the Department was notified by [REDACTED]s, that she could no longer perform services for Respondent.

Respondent falsely reported to the Department that he required home help services when he was capable of working in a factory. Respondent received earned income from employment while working as much as 50 hours in a week during the period he claimed to be non-ambulatory. Respondent publicly published photographs on the internet of himself working in the factory.

Respondent did not have a medical need requiring AHH benefits, and the benefits that were issued were not passed on to the designated service provider. Respondent fraudulently cashed the benefits checks he received and kept the money. Respondent was not eligible for the benefits he received on July 20, 2017, and June 15, 2017. Therefore, Respondent received a \$1,292.79 overissuance of AHH 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 273.16(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.*

This Administrative Law Judge finds that the Department has presented clear and convincing evidence that Respondent intentionally requested reimbursement for services that were not needed and were not performed. Respondent fraudulently cashed checks for AHH benefits that he was not eligible for.

The Department presented evidence showing that a total of \$1,292.79 in AHH benefits were issued on Respondent's behalf. Because Respondent was not eligible for those benefits due to a willful client error, the Department is entitled to collect those overissued benefits.

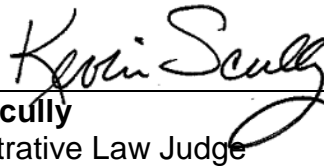
The Department has established an Intentional Program Violation (IPV).

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 Adult Home Help (AHH) benefits in the amount of \$1,292.79.
3. The Department is ORDERED to initiate recoupment procedures for the amount of \$1,292.79 in accordance with Department policy.

KS/dh



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

DHHS

Kathleen Verdoni
411 East Genesee
PO Box 5070
Saginaw, MI 48607

Saginaw County, DHHS

Policy-Recoupment via electronic mail

M. Shumaker via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

Respondent

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