



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

ORLENE HAWKS
DIRECTOR

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Date Mailed: February 6, 2019
MAHS Docket No.: 18-009744
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 January 9, 2019, from Lansing, Michigan. The Department was represented by Thomas Malik, Regulation Agent of the Office of Inspector General (OIG). Respondent appeared for the hearing and represented herself.

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 ██████████ ██████████ 2015, 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 11-35.
2. On an application for assistance dated May 23, 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 36-62.
3. The Respondent received Medical Assistance (MA) benefits from September 1, 2016, through February 28, 2018, with a value of \$7,740.46. Exhibit A, pp 86-88.
 4. On July 14, 2016, Respondent entered into a written lease for a home in North Carolina with a July 14, 2016, move-in date. Exhibit A, p 73.
 5. Respondent was issued a North Carolina driver's license on or around July 27, 2016. Exhibit A, p 80.
 6. On September 19, 2016, Respondent was sent written notice that her application for Medicaid from the state of North Carolina was approved and that she was eligible for benefits from August 1, 2016, through July 31, 2017. Exhibit A, p 81.
 7. Respondent applied for Medicaid from the state of California on April 6, 2017, and received benefits through August of 2018. Exhibit A, pp 83-85.
 8. The Department's OIG filed a hearing request on September 25, 2018, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 3.
 9. On September 25, 2018, the Department sent the Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$7,740.46 overpayment. Exhibit A, pp 7-8.
 10. This was Respondent's first established IPV.
 11. 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 (October 1, 2017), 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 (October 1, 2018), 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, 2018), p 3.

On applications for assistance dated [REDACTED] 2015, and May 23, 2016, Respondent acknowledged her duties and responsibilities, including the duty to report a change of residency and the receipt of medical assistance from another state.

The evidence supports a finding that Respondent relocated her residence to North Carolina in July of 2016. Without reporting her circumstances to the Department, Respondent applied for and received Medicaid benefits from the state of North Carolina from August of 2016, through July of 2017. Respondent was not eligible to receive MA benefits from Michigan while concurrently receiving Medicaid from North Carolina.

Respondent applied for Medicaid from the state of California on April 6, 2017, and received benefits through August of 2018, and again did not report receiving assistance concurrently with her Michigan benefits.

Respondent was not eligible for any of the MA benefits she received from September 1, 2016, through February 28, 2018. Therefore, Respondent received an overissuance of MA benefits totaling \$7,740.46.

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 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 uncontroverted and yet not be clear and convincing. Conversely, evidence may be clear and convincing even if contradicted. *Id.*

Respondent acknowledged the duties of receiving MA benefits from Michigan when she signed applications for assistance on [REDACTED] [REDACTED] 2015, and May 23, 2016. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.

Respondent testified that she was not aware that she had been approved for MA benefits and therefore was not aware of any duty to report when she applied for Medicaid in North Carolina.

Respondent was not eligible for MA benefits while concurrently receiving Medicaid in North Carolina, and later in California. This created an overissuance of Michigan MA benefits.

However, no evidence that the Department notified Respondent that she had been approved for MA benefits was presented on the record. No evidence that Respondent made use of her Michigan MA benefits was presented on the record. Therefore, although Respondent had a duty to report a change of circumstances affecting her eligibility to received benefits, the Department has failed to present clear and convincing evidence that Respondent intentionally failed to report her receipt of Medicaid in North Carolina for the purposes of maintaining her eligibility for Michigan MA benefits. Therefore, the Department has failed to establish an IPV.

Further, since Respondent had a duty to report relocating to North Carolina and receiving Medicaid benefits from another state, the failure to report this change and have her Michigan MA benefits closed is a client error. Therefore, Respondent remains liable to repay the overissuance of 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, concludes that:

1. The Department HAS NOT 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 \$7,740.46.
3. The Department is ORDERED to initiate recoupment procedures for the amount of \$7,740.46 in accordance with Department policy.

KS/dh



Kevin Scully
Administrative Law Judge
for Robert Gordon, Director
Department of Health and Human Services

