



STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

GRETCHEN WHITMER
GOVERNOR

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED] TX [REDACTED]

Date Mailed: February 6, 2019
MAHS Docket No.: 18-010330
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

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 Patrick Cousineau, 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 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 September 25, 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 8-35.

2. The Department's investigation report indicates that Respondent's last use of Food Assistance Program (FAP) benefits was in Michigan on March 12, 2017. Exhibit A, p 3.
3. Respondent received Michigan Medical Assistance (MA) benefits from May 1, 2017, through October 31, 2017, with a value of \$3,732.13. Exhibit A, pp 46-47.
4. Respondent received Medicaid benefits from the state of Texas from March 1, 2017, through September 5, 2018. Exhibit A, pp 36-37.
5. Respondent started employment on August 7, 2017, and reported a Texas residence to her employer while receiving earned income from August 10, 2017, through March 15, 2018. Exhibit A, pp 40-42.
6. The Department's OIG filed a hearing request on October 2, 2018, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 2.
7. On October 2, 2018, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$3,732.13 overpayment. Exhibit A, pp 5-6.
8. 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.

A Michigan resident is an individual who is living in Michigan except for a temporary absence. Department of Health and Human Services Bridges Eligibility Manual (BEM) 220 (April 1, 2018), p 1.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount within 10 days of receiving the first payment reflecting the change. Changes that must be reported include changes of residency and the receipt of Medicaid from another state. Department of Human Services Bridges Assistance Manual (BAM) 105 (October 1, 2016), pp 1-20.

On an application for assistance dated September 25, 2015, Respondent acknowledged the duties and responsibilities of receiving Michigan MA benefits. Respondent did not

have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.

The evidence supports a finding that Respondent left Michigan and became a resident of Texas because she applied for and was approved for Medicaid in Texas from March 12, 2017, through September 5, 2018. Respondent also failed to report that she started employment on August 7, 2017, and received earned income from August 10, 2017, through March 15, 2018, while reporting a Texas residence to her employer.

If Respondent had reported that she was receiving Medicaid in Texas in a timely manner, then the Department would have closed her Michigan MA no later than the benefit period after April 2, 2017. Respondent received Michigan MA benefits from May 1, 2017, through October 31, 2017, with a value of \$3,732.13.

Respondent testified that she thought that she had called her caseworker and requested that her MA benefits be closed. Respondent failed offer any evidence that she had requested closure of her MA benefits other than her testimony.

The evidence supports a finding that Respondent was no longer a resident as of March 12, 2017, when she applied for Medicaid in Texas. Respondent's lack of intent to remain a Michigan resident is further supported by her acceptance of employment in Texas. No evidence was presented on the record that Respondent had any remaining ties to Michigan after March 1, 2017, or had any intent to return after relocating in Texas temporarily.

Respondent was not eligible to receive Michigan MA benefits while concurrently receiving Medicaid from the state of Texas.

Respondent was not eligible for any of the MA benefits she received from May 1, 2017, through October 31, 2017, and she received a \$3,732.13 overissuance of MA 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.

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.*

Respondent acknowledged the duties and responsibilities of receiving MA benefits when she signed an application for assistance dated September 25, 2015. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.

Respondent does not dispute that she left Michigan and relocated in Texas where she applied for Medicaid. Respondent testified that she thought that her Michigan MA benefits closed. The Department's investigation report indicates that Respondent stopped using Michigan FAP benefits on March 12, 2017, and did not use those benefits in Texas.

Although no evidence was presented supporting Respondent's testimony that she reported a change of residency to the Department, her actions were consistent with her claim that she thought her Michigan MA benefits were closed. Respondent stopped using her FAP benefits around the time she relocated to Texas, and no evidence was presented that she did not stop using her Michigan MA benefits around the same time.

The Department has not presented clear and convincing evidence that Respondent intentionally failed to report a change of residency and concurrent receipt of medical assistance for the purposes of maintaining her eligibility for Michigan MA benefits that she would not have been eligible for otherwise.

The evidence does support a finding that Respondent mistakenly failed to ensure that her Michigan MA benefits were closed when her eligibility for those benefits ended. Respondent failed to establish that she met the eligibility criteria for Michigan MA

benefits and therefore is responsible for an overissuance of Michigan MA benefits due to client error.

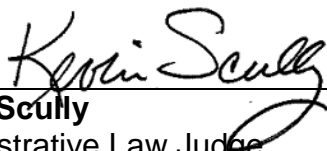
The Department has not established an Intentional Program Violation (IPV).

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, 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 \$3,732.13.
3. The Department is ORDERED to initiate recoupment procedures for the amount of \$3,732.13 in accordance with Department policy.

KS/dh



Kevin Scully
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

DHHS

Linda Gooden
25620 W. 8 Mile Rd
Southfield, MI 48033

Oakland County (District 3), DHHS

Policy-Recoupment via electronic mail

M. Shumaker via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

Respondent

[REDACTED]
[REDACTED]
[REDACTED] TX [REDACTED]