



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

J [REDACTED]
[REDACTED]
[REDACTED] KY [REDACTED]

Date Mailed: January 15, 2019
MAHS Docket No.: 18-010871
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jeffrey Kemm

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 Title 42 of the Code of Federal Regulation (CFR), particularly 42 CFR 431.230(b). After due notice, a telephone hearing was held on January 10, 2019, from Lansing, Michigan. The Department was represented by Patrick Cousineau, Regulation Agent of the Office of Inspector General (OIG). Respondent, [REDACTED] [REDACTED] did not appear. The hearing was held in Respondent's absence.

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 [REDACTED] [REDACTED] 2015, Respondent applied for assistance from the Department, including MA. Respondent asserted in his application that he lived in Michigan.
2. The Department approved Respondent for MA and provided MA to Respondent thereafter.

3. Sometime in 2016, Respondent moved to Kentucky. The Department was unaware Respondent moved to Kentucky, so the Department continued to provide MA for Respondent.
4. Respondent did not use the MA provided by the Department while he was living in Kentucky.
5. On July 11, 2016, Respondent obtained employment at [REDACTED]
6. The Department investigated Respondent's case when the Department discovered Respondent was employed.
7. The Department contacted Respondent to discuss his case. Respondent advised the Department that he moved to Kentucky sometime in 2016 and that he thought his MA had closed.
8. Respondent did not have any apparent physical or mental impairment that would limit his understanding or his ability to fulfill requirements of the Department.
9. On October 16, 2018, the Department's OIG filed a hearing request to establish that Respondent received an overissuance of benefits and that Respondent committed an IPV.
10. The OIG requested recoupment of \$5,272.50 in MA benefits issued from September 2016 through July 2017.
11. A notice of hearing was mailed to Respondent at his last known address and it 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), 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.

Overissuance

An overissuance is the amount of benefits issued to the client group in excess of what it was eligible to receive. BAM 700 (January 1, 2018), p.1. When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, p. 1.

Only a resident of Michigan is eligible for assistance from the Department. BEM 220 (April 1, 2018), p. 1. For MA, an individual is a resident if he lives in Michigan except for a temporary absence. BEM 220, p. 2. Here, the Department alleged that Respondent was overissued MA because he received MA when he was no longer a resident of Michigan. The Department alleged that Respondent was overissued MA from September 2016 through July 2017.

Although the Department presented evidence that Respondent received MA when he was no longer a resident of Michigan, the Department did not present sufficient evidence to establish that Respondent was overissued benefits beginning in September 2016. The only reliable evidence the Department presented to establish the date Respondent moved was Respondent's statement from an interview in which he stated that he "moved in 2016." The Department presented evidence to establish that Respondent began employment in 2016, but the Department did not present any evidence to establish where Respondent was working or where he was living at the time. Based on the evidence presented, it is unclear when in 2016 Respondent moved from Michigan. Therefore, the only overissuance that can be established is for the MA that was issued from January 2017 through July 2017, which cost the Department \$4,566.75.

Intentional Program Violation

An intentional program violation (IPV) "shall consist of having intentionally: (1) Made a false or misleading statement, or misrepresented, concealed or withheld facts; or (2) Committed any act that constitutes a violation of SNAP, SNAP regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of SNAP benefits or EBT cards." 7 CFR 273.16(c). 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. 7 CFR 273.16(e)(6). 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, I find that the Department has not met its burden. The Department did not present sufficient evidence to establish that Respondent intentionally withheld or misrepresented information to obtain or increase his benefits. The Department alleged that Respondent intentionally withheld or misrepresented information when he failed to report to the Department that he moved to Kentucky. However, the Department did not

present any evidence to establish that it instructed Respondent to report a move or change in his residence to the Department. Thus, the Department did not establish that Respondent knew he was supposed to report his move or change in residence to the Department. Therefore, even if Respondent failed to report a move or change in residence, it cannot be considered an intentional program violation because there is no evidence that Respondent knew he was supposed to report such a change to the Department.

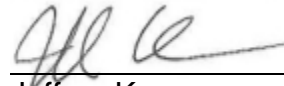
DECISION AND ORDER

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. Respondent received an overissuance of \$4,566.75 in MA benefits that the Department is entitled to recoup.
2. The Department has not established, by clear and convincing evidence, that Respondent committed an IPV.

IT IS ORDERED THAT the Department may initiate recoupment procedures for the amount of \$4,566.75 in MA benefits in accordance with Department policy.

JK/nr



Jeffrey Kemm
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

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

Oakland 4 County DHHS- via electronic
mail

MDHHS- Recoupment- via electronic mail

M. Shumaker- via electronic mail

DHHS

Renee Swiercz
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48342

Respondent

[REDACTED]
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[REDACTED], KY
[REDACTED]