



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

ORLENE HAWKS  
DIRECTOR

[REDACTED]  
[REDACTED]  
[REDACTED] NC [REDACTED]

Date Mailed: February 6, 2019  
MAHS Docket No.: 18-011607  
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 filed a request for adjournment on December 17, 2018, but then agreed to appear for the hearing by teleconference telephone call. Respondent appeared for the hearing by telephone 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. Respondent completed an application for medical assistance with the Federally Facilitated Marketplace on [REDACTED], 2015, which was transferred to the Department for determination of her eligibility for Medical Assistance (MA). Exhibit A, pp 8-16.

2. On [REDACTED], 2015, the Department sent Respondent a Health Care Coverage Determination Notice (DHS-1606) addressed to the mailing address listed on her [REDACTED], 2015, application form, notifying her that she was approved for Medical Assistance (MA) benefits from [REDACTED], 2015, and ongoing. The Department also notified Respondent of her duty to report changes within 10 days. Exhibit A, pp 17-20.
3. The Respondent received Michigan Medical Assistance (MA) benefits from [REDACTED], 2015, through [REDACTED], 2017, with a value of \$10,419.92. Exhibit A, pp 27-30.
4. The Respondent received Medicaid benefits from the state of North Carolina from [REDACTED], 2015, through [REDACTED], 2018. Exhibit A, pp 21-22.
5. The Department's OIG filed a hearing request on November 7, 2018, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 2.
6. On November 7, 2018 the Department sent the Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$10,419.92 overpayment. Exhibit A, pp 5-6.
7. This was Respondent's first established IPV.
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.

Respondent filed an application for medical assistance with the Federally Facilitated Marketplace on [REDACTED] [REDACTED] 2015, which was transferred to the Department. On [REDACTED] [REDACTED] 2015, the Department notified Respondent that she was approved for Michigan MA benefits effective [REDACTED], 2015, and ongoing. Respondent was also notified in writing of her duty to report changes to her circumstances within 10 days. It is presumed that Respondent received this notice, but the evidence does not support a finding that she acknowledged her duties and responsibilities.

Respondent failed to report to the Department that she had applied to the state of North Carolina for Medicaid benefits in June of 2015, and received North Carolina Medicaid from J[REDACTED], 2015, through [REDACTED] [REDACTED] 2018. The value of Respondent's Michigan MA benefits was \$10,419.92, and she was not eligible for any of those benefits while concurrently receiving North Carolina Medicaid. Therefore, Respondent received a \$10,419.92 overissuance of Michigan MA.

### **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 had a duty to report changes to her circumstances affecting her eligibility for Michigan MA benefits. The record evidence does not support a finding that Respondent acknowledged this duty since her application for medical assistance was not with the Department but was with the Federal Facilitated Marketplace. The Department sent Respondent written notice of her duty to report changes within 10 days, which she presumably received since it was properly addressed. The evidence does not establish that Respondent acknowledged this duty.

Respondent testified that she was not aware that she had Michigan MA benefits and the evidence does not support a finding that she made use of her Michigan MA benefits.

This Administrative Law Judge finds that the Department has not presented clear and convincing evidence that the Respondent intentionally failed to report information needed to make a correct benefit determination for the purposes of maintaining Michigan MA benefits that she was not eligible for.

However, Respondent had a duty to report changes to her circumstances even if she did not acknowledge that duty. Respondent failed to establish that she was eligible for Michigan MA benefits after July 1, 2015. Respondent received Michigan MA benefits that she was not eligible for while concurrently receiving Medicaid from the state of North Carolina. Therefore, Respondent received a \$10,419.92 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 \$10,419.92.
3. The Department is ORDERED to initiate recoupment procedures for the amount of \$10,419.92 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] NC [REDACTED]