



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED], AZ [REDACTED]

Date Mailed: March 19, 2019
MAHS Docket No.: 18-013568
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [REDACTED]

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

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, 42 CFR 431.230(b), and 45 CFR 235.110, and with Mich Admin Code, R 400.3130 and 400.3178. After due notice, a telephone hearing was held on March 6, 2019, from Lansing, Michigan.

The Department was represented by Adriane Laugavitz, Regulation Agent of the Office of Inspector General (OIG). Ms. Laugavitz testified on behalf of the Department. The Department submitted 36 exhibits which were admitted into evidence.

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). The record was closed at the conclusion of the hearing.

ISSUES

1. Did Respondent receive an overissuance (OI) of Food Assistance Program (FAP) benefits that the Department is entitled to recoup?
2. Did Respondent receive an OI of Medical Assistance (MA) benefits that the Department is entitled to recoup?
3. Did the Department establish, by clear and convincing evidence, that Respondent committed an Intentional Program Violation (IPV)?
4. Should Respondent be disqualified from receiving FAP benefits for 12 months?

FINDINGS OF FACT

The Administrative Law Judge, based on competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Department's OIG filed a hearing request on December 5, 2018, to establish an overissuance of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. [Dept. Exh. 1].
2. Respondent was a recipient of Medicaid program benefits issued by the Department and the State of Arizona. [Dept. Exh. 1, 4].
3. Respondent was aware of the responsibility to report change of address within 10 days as evidenced by her signature on the Medicaid application, dated March 6, 2016. [Dept. Exh. 8-32].
4. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. [Dept. Exh. 11].
5. The Department's OIG indicates that the time period it is considering the fraud period is August 1, 2017 through February 28, 2018. [Dept. Exh. 4].
6. On February 6, 2018, the Department received verification from the State of Arizona that Respondent had applied for Medicaid benefits in Arizona in August 2017 and she had been receiving Medicaid benefits from Arizona since August 1, 2017 ongoing. [Dept. Exh. 33-34].
7. During the fraud period, Respondent received \$1,775.40 in Medicaid benefits from the State of Michigan to which Respondent was not entitled. [Dept. Exh. 4].
8. This was Respondent's first alleged Medicaid IPV. [Dept. Exh. 4].
9. A notice of hearing was mailed to Respondent at the last known address and was not returned by the US Post Office 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.

Effective October 1, 2017, the Department's Office of Inspector General requests Intentional Program Violation hearings for the following cases:

1. FAP trafficking overissuances that are not forwarded to the prosecutor.
2. Prosecution of welfare fraud or Food Assistance Program trafficking is declined by the prosecutor for a reason other than lack of evidence, and
 - The total amount for the Family Independence Program (FIP), State Disability Assistance (SDA), Child Development and Care (CDC), Medicaid (MA) and Food Assistance Program (FAP) programs combined is \$500 or more, or
 - the total amount is less than \$500, and
 - the group has a previous Intentional Program Violation, or
 - the alleged Intentional Program Violation involves Food Assistance Program trafficking, or
 - the alleged fraud involves concurrent receipt of assistance (see BEM 222), or
 - the alleged fraud is committed by a state/government employee. BAM 720, pp 12-13 (10/1/2017).

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 his or her reporting responsibilities, and

- The client has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill reporting responsibilities. 7 CFR 273.16(c); BAM 720, p 1 (emphasis in original).

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(c). Clear and convincing evidence is evidence sufficient to result in a clear and firm belief that the proposition is true. See M Civ JI 8.01.

In this case, the Respondent intentionally failed to report that she moved to Arizona and was still receiving Medicaid benefits from Michigan. Respondent's signature on the Medicaid application dated [REDACTED] 2016, certifies that she was aware that fraudulent participation in Medicaid could result in criminal, civil or administrative claims. Because of Respondent's failure to report that she was living in Arizona and was receiving duplicate Medicaid benefits, she received an overissuance from the State of Michigan and the Department is entitled to recoup the \$1,775.40 in Medicaid benefits.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, p 1 (1/1/2018); 7 CFR 273.18.

In this case, Respondent received a \$1,775.40 Medicaid program benefit overissuance based on her failure to timely report her move to Arizona 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, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did receive and overissuance of Medicaid program benefits in the amount of \$1,775.40.

The Department is ORDERED to initiate recoupment procedures for the Medicaid program benefits amount of \$1,775.40 in accordance with Department policy.

VLA/nr



Vicki L. Armstrong
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

Mark Epps
4809 Clio Road
Flint, MI
48504

Genesee Clio County DHHS- via
electronic mail

MDHHS- Recoupment- via electronic mail

L. Bengel- via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

Respondent

[REDACTED]
[REDACTED]
[REDACTED] AZ
[REDACTED]