



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED] IN [REDACTED]

Date Mailed: May 21, 2019
MOAHR Docket No.: 18-013956
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Landis Lain

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 May 8, 2019, from Lansing, Michigan. The Department was represented by Amber Johnson, Regulation Agent of the Office of Inspector General (OIG).

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).

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)?
3. Should Respondent be disqualified from receiving benefits for MA?

FINDINGS OF FACT

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

1. The Department's OIG filed a hearing request on December 28, 2018, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. The OIG **has not** requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of Medical Assistance program benefits issued by the Department.
4. Respondent **was** aware of the responsibility to report accurate information and changes to the Department within ten days as evidenced by Respondent's submission of a MDHHS-1171 Application for Assistance filed [REDACTED] 2016.
5. Respondent **did not have** an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The Department's OIG indicates that the time period it is considering the fraud period is November 1, 2016-June 30, 2018 (fraud period).
7. During the fraud period, Respondent was issued \$3,574.81 in MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in MA benefits in the amount of \$3,574.81.
9. This was Respondent's **first alleged** IPV.
10. A notice of hearing was mailed to Respondent at the last known address and **was not** returned by the United States Postal Services 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.

Pertinent Department policy in the dictates:

To be eligible for MA in the State of Michigan, a person must be a Michigan resident. Bridges uses the requirements in the Residence section in this item to determine if a person is a Michigan resident. BEM 220, page 1

A Michigan resident is an individual who is living in Michigan except for a temporary absence. Residency continues for an individual who is temporarily absent from Michigan or intends to return to Michigan when the purpose of the absence has been accomplished.

Example: Individuals who spend the winter months in a warmer climate and return to their home in the spring. They remain MI residents during the winter months.

Example: College students who attend school out of state but return home during semester breaks or for the summer can remain MI residents. A Michigan resident is an individual who is living in Michigan except for a temporary. BEM 220, page 2

Effective January 1, 2016, 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 amount for the FIP, SDA, CDC, MA and FAP programs combined is \$500 or more, or
 - the total 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. BAM 720, pp 12-13 (1/1/2016).

Intentional Program Violation

Suspected IPV means an OI exists for which all three of the following conditions exist:

- The Respondent intentionally failed to report information **or** intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, and
- The Respondent was clearly and correctly instructed regarding his or her reporting responsibilities, and
- The Respondent has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill reporting responsibilities. BAM 720, p 1.

IPV exists when the beneficiary or authorized representative:

- Is found guilty by a court, or
- Signs a DHS-4350, IPV Repayment Agreement, and the prosecutor or the Office of Inspector General (OIG), authorizes recoupment in lieu of prosecution, or
- Is found responsible for the IPV by an administrative law judge conducting an IPV or debt establishment hearing.

An IPV requires that the Department establish by clear and convincing evidence that the Respondent 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(e)(6). 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.

The evidence on the record indicates that:

Respondent and her daughter have PARIS matches in the States of Indiana and Texas. Verification was received from the State of Texas showing that Respondent received SNAP from August 1, 2016 - August 31, 2016. Respondent and her daughter received Medicaid from November 1, 2016 - October 31, 2017. Verification was received from Indiana showing that Respondent received SNAP from April 5, 2017 - June 30, 2017, from September 11, 2017 - March 31, 2018, and from April 3, 2018 – September 30, 2018. Respondent also received Medicaid from March 1, 2017 – September 30, 2018, while her daughter received MA from February 1, 2017 – September 30, 2018. Respondent received dual assistance in Michigan, Texas, and Indiana. The fraud period is November 1, 2016 – June 30, 2018. This case will be referred to an Administrative Hearing for a recoupment of benefits.

The Department established by clear and convincing evidence that Respondent intentionally established residency in Indiana. Respondent did not notify the State of Michigan that she had moved and continued to use State of Michigan MA benefits in the States of Indiana and Texas, when Respondent was not a resident of Michigan. Respondent did sign an application stating that she understood the reporting responsibilities. Respondent withheld or misrepresented information that she was a resident of the State of Michigan, while she was resident of the State of Indiana for the purpose of maintaining MA benefits. Therefore, the Department has established an IPV.

Disqualification

A court or hearing decision that finds a Respondent committed an IPV disqualifies that Respondent from receiving program benefits. BAM 720, p 15. A disqualified Respondent remains a member of an active group as long as he lives with them, and other eligible group members may continue to receive benefits. BAM 720, p 17.

Respondents who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the OI relates to MA or FAP. BAM 720, p 13. Respondents are disqualified for periods of one year for the first IPV, two years for the second IPV, lifetime disqualification for the third IPV, and ten years for a FAP concurrent receipt of benefits. BAM 720, p 18.

Overissuance

When a Respondent group receives more benefits than entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, p 1 (1/1/2016).

The Department has established that Respondent failed to report her change of residency. Respondent submitted an application on June 3, 2016, acknowledging the right and responsibility for reporting accurate information and changes to the agency as required. Eligibility screens were received from the State of Indiana showing that Respondent received assistance in Indiana for the periods of April 5, 2017 – June 30, 2017, September 11, 2017 – March 31, 2018, and April 3, 2018 – September 30, 2018. Verification was received from the State of Texas showing Respondent received MA assistance from November 1, 2016 – October 31, 2017. Respondent was not eligible for benefits received in Michigan and this is supported by her EBT transactions in Indiana showing her spending as exclusively occurring in Indiana during the time she received Michigan MA benefits. The fraud period is November 1, 2016 – June 30, 2018. The total OI is \$3,574.81.


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 an over issuance of Medical Assistance Program Benefits in the amount \$3,574.81.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$3,574.81 in accordance with Department policy.

LL/hb



Landis Lain
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 Office of Administrative Hearings and Rules (MOAHR).

A party may request a rehearing or reconsideration of this Order if the request is received by MOAHR 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. MOAHR will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MOAHR. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MOAHR 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

Lori Duda
30755 Montpelier Drive
Madison Heights, MI 48071

Oakland County (District 2), DHHS

Policy-Recoupment via electronic mail

L. Bengel via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

Respondent

[REDACTED]
[REDACTED], IN [REDACTED]