



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: April 18, 2019
MAHS Docket No.: 19-001839
Agency No.: ██████████
Petitioner: OIG
Respondent: ██████████

ADMINISTRATIVE LAW JUDGE: John Markey

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 April 15, 2019, from Detroit, Michigan. The Department was represented by ██████████ Regulation Agent of the Office of Inspector General (OIG). Respondent appeared and represented himself. During the hearing, a 42-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-42.

ISSUES

1. Did Respondent receive an overissuance (OI) of Medicaid (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) with respect to 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. Respondent was working for ██████████ (██████████) when he suffered an injury that prevented him from being able to work and resulted in the loss of medical insurance.
2. On ██████████, 2016, Respondent submitted to the Department an application for MA benefits. Exhibit A, pp. 8-32.

3. Respondent signed the application, thereby certifying the truth of the information contained in the application and that he understood the instructions in the booklet titled "Important Things to Know." Exhibit A, p. 14.
4. The "Important Things to Know" booklet informed Respondent that he was required report certain types of changes in circumstances to the Department within ten days of the change. Regarding starting employment, Respondent was informed that he was required to report the change to the Department within ten days of receiving his first payment. Further, the instructions stated that failure to properly report a change could result in penalties for fraud. Exhibit A, p. 15.
5. On or about February 7, 2017, Respondent returned to work for [REDACTED]. On or about February 17, 2017, [REDACTED] issued to Respondent his first paycheck. Respondent worked continuously for [REDACTED] through at least sometime in 2018. Exhibit A, pp. 33-36.
6. Either shortly before or shortly after returning to work for [REDACTED], Respondent called the Department and told his worker that he had returned to work.
7. Respondent continued to be covered by the Department-issued MA until May 31, 2017, without the Department factoring in his income from his employment with AutoZone. Exhibit A, pp. 37-40.
8. On February 13, 2019, the Department's OIG filed a hearing request to establish an IPV with respect to MA. The Department considers the alleged fraud period to be April 1, 2017, through May 31, 2017. During that time, the Department expended \$1,109.14 in MA benefits on Respondent's behalf. The Department asserts that Respondent was not entitled to any MA coverage during those two months as his income exceeded the income limit for coverage. The Department's hearing request sought to establish an overissuance of MA benefits of \$1,109.14. Exhibit A, pp. 1-6; 37-40.
9. 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.
10. Respondent did not have any apparent mental or physical impairment that would limit his understanding or ability to fulfill his reporting requirements. Exhibit A, p. 41.

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.

The Department's position is that Respondent committed an IPV with respect to MA by allegedly failing to report when he returned to work for [REDACTED], causing the Department to overissue Respondent MA benefits for the period from April 1, 2017, through May 31, 2017, both of which were months that Respondent's income exceeded the income limit for MA coverage.

Overissuance

An overissuance is the amount of benefits issued to the client group in excess of what it was eligible to receive. BAM 700 (October 2016), p. 1; 7 CFR 273.18. When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, p. 1; 7 CFR 273.18.

In this case, Respondent received more benefits than he was entitled to receive. The Department determined Respondent's eligibility without budgeting his wages from his employment with [REDACTED] which caused Respondent's income to be understated. When factored into the equation, Respondent's income rendered Respondent ineligible for MA coverage. Thus, the Department has established that Respondent received MA coverage that he was not entitled to receive. The overissuance value was shown to be \$1,109.14.

However, the Department may only initiate recoupment of an overissuance due to client error or an intentional program violation, not when the overissuance is due to agency error. BAM 710 (October 2016), p. 1. An agency error overissuance is an overissuance caused by incorrect actions of the Department, including the Department's failure to properly use available information. BAM 705 (January 2016), p. 1.

In this case, Respondent credibly testified that he contacted the Department either immediately before or shortly after returning to work for [REDACTED] in February 2017 and told the worker that he had returned to work. When Respondent asked for advice on what he was supposed to do, he was told that he had fulfilled his reporting requirement. However, for some reason, the Department continued to provide Respondent with MA coverage he did not want for an additional couple months before the case was inexplicably closed. Under these circumstances, the overissuance was caused by the Department's failure to act on available information regarding Respondent's return to work. As such, the overissuance is an agency error overissuance, and the Department is prohibited by policy from pursuing the overissuance from Respondent.

Intentional Program Violation

The Department's policy in effect at the time of Respondent's alleged IPV defined an IPV as an overissuance in which the following three conditions exist: (1) the client intentionally failed to report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination; (2) the client was clearly and correctly instructed regarding his or her reporting responsibilities; and (3) the client has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill his or her reporting responsibilities. BAM 720 (January 2016), p. 1; 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. BAM 720, page 1; see also 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)).

Respondent was required to report changes in his circumstances to the Department within 10 days of the date of the change. BAM 105 (October 2016), pp. 11-12. The Department alleges that Respondent breached this duty by failing to report his return to work and that the breach amounted to an IPV.

The Department, however, has not met its burden of proof in this matter. Respondent credibly testified that he, in fact, did tell the Department that he returned to work either shortly before or shortly after February 7, 2017. Thus, Respondent met his reporting requirements. Accordingly, the Department failed to meet its burden of showing by clear and convincing evidence that Respondent committed an IPV with respect to MA by either making a false statement or intentionally failing to report a change.

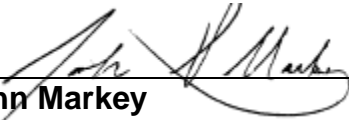
DECISION AND ORDER

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. The Department failed to establish by clear and convincing evidence that Respondent committed an IPV with respect to his MA benefits.
2. The Department has not established an overissuance of MA benefits that it has the right to recoup and/or collect.

IT IS FURTHER ORDERED that the Department must delete the alleged MA overissuance from April 1, 2017, through May 31, 2017.

JM/cg



John Markey
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

Via Email:

MDHHS-Wayne-19-Hearings
OIG Hearings
Recoupment
MAHS

Respondent – Via First-Class Mail:

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