



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
TX [REDACTED]

Date Mailed: July 10, 2019
MOAHR Docket No.: 19-003521
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Vicki L. Armstrong

**HEARING DECISION FOR CONCURRENT BENEFITS
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 Regulations, particularly 7 CFR 273.16, 42 CFR 431.230(b), and 45 CFR 235.110, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on July 2, 2019 from Lansing, Michigan.

The Department was represented by Patrick Cousineau of the Office of Inspector General (OIG). Mr. Cousineau testified on behalf of the Department. The Department submitted 67 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 Medical Assistance 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 competent, material, and substantial evidence on the whole record, finds as material fact:

1. The Department's Office of Inspector General filed a hearing request on March 20, 2019, to establish an overissuance of benefits received by Respondent as a result of Respondent having allegedly committed a concurrent Intentional Program Violation.
2. On [REDACTED] [REDACTED] 2015, Respondent submitted an application for Cash Assistance, Food Assistance, and Child Development and Care benefits. Respondent listed a Detroit, Michigan address as her residence. [Dept. Exh. 11-48].
3. On February 2, 2018, the Texas Department of Health and Human Services reported that Respondent had been receiving Medical Assistance benefits from the State of Texas since [REDACTED] [REDACTED] 2016. [Dept. Exh. 49-53].
4. According to the Work Number, Respondent was employed in Austin, Texas by [REDACTED] and had started working for the company in September 2016 until she was terminated in January 2017. Respondent then worked at [REDACTED] from October 2017 until she quit in December 2017 with a home address of [REDACTED] Texas. In November 2018, Respondent began working at [REDACTED] in [REDACTED] Texas. She was still employed at [REDACTED] as of [REDACTED] 2019. [Dept. Exh. 54-57].
5. Respondent was aware of the responsibility to report changes in her residence to the Department. [Dept. Exh. 32].
6. Respondent had no apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. [Dept. Exh. 19].
7. Respondent did not appear and give evidence at hearing to rebut the evidence presented by Petitioner in the Hearing Summary with attachments.
8. During the alleged fraud period, Respondent was issued \$14,435.27 in Medicaid benefits from the State of Michigan. [Resp. Exh. 3-4].
9. The Office of Inspector General indicates that the time period they are considering the fraud period for concurrent receipt of Medicaid benefits is from August 1, 2016 through February 28, 2018. [Resp. Exh. 63-66].
10. A notice of hearing was mailed to Respondent at the last known address in Richmond, Texas, and was not returned by the US Post Office.

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), and Department of Health and Human Services 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 of Health and Human Services (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. 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(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.

It is well settled that a person cannot receive Medicaid in Michigan unless they are a resident of Michigan. BEM 220, p 1 (4/1/2018). Moreover, a client is responsible for reporting any change in circumstances that may affect eligibility or benefit level within ten days of the change. BAM 105, pp 11-12 (1/1/2019). In this case, the Department established that Respondent intentionally withheld information from the Department of her move to Texas for the purpose of maintaining or preventing reduction of Medicaid benefits or eligibility, resulting in the receipt of concurrent Medicaid benefits from both Texas and Michigan.

Overissuance

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

In this case, the Department has shown that Respondent received an overissuance of Medicaid benefits of \$14,435.27 from August 1, 2016 through February 28, 2018. Therefore, the Department is entitled to recoupment.

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 Intentional Program Violation.
2. Respondent did receive an overissuance of Medicaid benefits in the amount of \$14,435.27.

The Department is ORDERED to initiate recoupment procedures for the amount of \$14,435.27 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 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 Office of Administrative Hearings and Rules
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

Denise McCoggle
27260 Plymouth Rd
Redford, MI
48239

Wayne 15 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]
TX