



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], MI [REDACTED]

Date Mailed: December 19, 2019
MOAHR Docket No.: 19-009046
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Carmen G. Fahie

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 December 3, 2019, from Lansing, Michigan. The Department was represented by Daniel Marchetti, #004, 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)?

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 August 12, 2019, 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 MA benefits issued by the Department. Department Exhibit 1, pg. 60.
4. On the Online Assistance Application, DHS-1171, signed by Respondent on [REDACTED], 2017, Respondent reported that he intended to stay in Michigan. Department Exhibit 1, pgs. 9-37.
5. Respondent **was** aware of the responsibility to report changes in his residence to the Department where Respondent was sent a Health Care Coverage Determination Notice, DHS-1606, on October 2, 2017, that informed him that he was eligible for MA effectively from September 1, 2017 ongoing and included the responsibility to report changes in address within 10 days. Department Exhibit 1, pgs. 35-37.
6. Respondent applied for Food Assistance Program (FAP) and MA benefits outside of the State of Michigan in Indiana beginning in September 14, 2018. Department Exhibit 1, pgs. 39-54.
7. Respondent **did not have** an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Department Exhibit 1, pg. 61.
8. The Department's OIG indicates that the time period it is considering the fraud period is October 1, 2018, through January 31, 2019 (fraud period). Department Exhibit 1, pg. 60.
9. During the fraud period, Respondent was issued \$2,291.48 in MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0.00 in such benefits during this time period. Department Exhibit 1, pg. 60.
10. The Department alleges that Respondent received an OI in MA benefits in the amount of \$2,291.48.
11. This was Respondent's **first** alleged IPV.
12. 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), 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, 2014, the Department's OIG requests IPV hearings for the following cases:

- Willful overpayments of \$500.00 or more under the AHH program.
- FAP trafficking overissuances 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 \$500.00 or more, or
 - the total amount is less than \$500.00, 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; ASM 165.

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 700; BAM 720.

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. BAM 720.

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, (emphasis in original); see also 7 CFR 273.16(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.

Overissuance

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700.

In this case, Respondent was a recipient of MA benefits in the State of Michigan. He applied for FAP and MA benefits in the State of Indiana on September 14, 2018 and received those benefits but did not close his MA case in the State of Michigan. The Respondent received MA benefits concurrently from Michigan and Indiana from October 1, 2018, through January 31, 2019. Respondent failed to report his lack of residency to the State of Michigan to the Department, which resulted in him receiving an overissuance of MA benefits of \$2,291.48 that the Department is required to recoup during the contested time period. Department Exhibit 1, pgs. 1-61.


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 **has** established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent **did** receive an OI of MA program benefits in the amount of \$2,291.48.

The Department is ORDERED to initiate recoupment/collection procedures for the amount of \$2,291.48 in accordance with Department policy.

CF/hb



Carmen G. Fahie
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

Charisse Ryden
51111 Woodward Ave 5th Floor
Pontiac, MI 48342

Oakland County (District 4), DHHS

Policy-Recoupment via electronic mail

L. Bengel via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

Respondent

[REDACTED]
[REDACTED]
[REDACTED], MI [REDACTED]