[redacted]

Date Mailed: February 21, 2020
MOAHR Docket No.: 19-009993
Agency No.: [redacted]
Petitioner: OIG
Respondent: [redacted]

ADMINISTRATIVE LAW JUDGE: Zainab A. Baydoun

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 January 22, 2020, from Detroit, Michigan. The Department was represented by [redacted] 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).

ISSUE

Did Respondent receive an overissuance (OI) of Medical Assistance (MA) benefits that the Department is entitled to recoup?

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 a recipient of MA benefits under the Healthy Michigan Plan (HMP) issued by the Department. From November 1, 2017 to March 31, 2018 and May 1, 2018 to August 31, 2018 (MA fraud period), the Department paid $5,062.86 in MA benefits on Respondent's behalf and the Department alleges that Respondent was entitled to $0 in such benefits during this time period, resulting in a MA OI of $5,062.86.

2. On [redacted], 2016, an application for MA benefits was submitted on Respondent's behalf which Respondent electronically signed. On [redacted], 2017, Respondent signed and submitted a redetermination to continue receiving MA benefits. In signing the application and redetermination, Respondent acknowledged being aware of the responsibility to accurately report his circumstances and to report changes in his circumstances to the Department, including changes in employment and income. (Exhibit A, pp. 10-41)

    a. The Department sent Respondent a Health Care Coverage Determination Notice dated August 17, 2017 him of his approval of emergency services only MA benefits and again advising him of his reporting responsibilities with respect to his income and employment. (Exhibit A, pp. 42-45)

3. The Department had no reason to believe that Respondent had a physical or mental impairment that would limit his understanding or ability to fulfill his reporting requirements.

4. On or around [redacted], 2017, Respondent submitted a Change Report to the Department on which he reported a change in his immigration status, specifically reporting that he is a United States citizen. Respondent did not report any additional changes to the Department on the Change Report submitted. (Exhibit A, pp. 46-48)

5. The Department obtained Respondent's Verification of Employment, showing that he gained employment and received his first pay on August 4, 2017 and that he continued to be employed and earning income through October 5, 2018. (Exhibit A, pp. 54-57)

6. The Department's OIG filed a hearing request on or around September 23, 2019 alleging that Respondent failed to report his earned income and as a result received MA benefits that he was ineligible to receive, causing a MA OI of $5,062.86. The Department requested a recoupment of the MA OI.

7. A Notice of Hearing was mailed to Respondent at his 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.

The Department may initiate recoupment of an MA overissuance only due to client error or IPV, not when due to agency error. BAM 710 (October 2018), p. 1. A client error OI occurs when the client received more benefits than entitled to because the client gave incorrect or incomplete information to the Department. BAM 700, p. 7.

An IPV occurs when a recipient of Department benefits intentionally (1) made a false or misleading statement, or misrepresented, concealed or withheld facts; or (2) committed any act that constitutes a violation FAP, FAP federal regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of FAP benefits or electronic benefit transfer (EBT) cards. 7 CFR 273.16(c). For an IPV based on inaccurate reporting, Department policy requires that an OI, and all three of the following exist: the client intentionally failed to report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, and the individual was also clearly and correctly instructed regarding his or her reporting responsibilities and the individual have no apparent physical or mental impairment that limits his or her understanding or ability to fulfill reporting responsibilities. BAM 720 (October 2017), p. 1.

To establish an IPV, the Department must present clear and convincing evidence that the household member committed, and intended, to commit the IPV or intentionally withheld or misrepresented information for the **purpose** of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. 7 CFR 273.16(e)(6); BAM 720, p. 1. 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; *Smith v Anonymous Joint Enterprise*, 487 Mich 102; 793 NW2d 533, 541 (2010)

In this case, the Department alleges that Respondent failed to timely report to the Department that he was employed and earning income, causing an overissuance of MA benefits. Clients must completely and truthfully answer all questions on forms and in interviews. Clients must report changes in circumstances that potentially affect eligibility or benefit amount. Changes such as starting or stopping employment, earning income, and starting or stopping a source of unearned income must be reported within ten days of receiving the first payment reflecting the change. BAM 105 (October 2016), pp. 9-12.

The Department contended that Respondent's failure to timely report the employment and earned income caused an OI of MA benefits in the amount of $5,062.86 from November 2017 to March 2018 and from May 2018 to August 2018. The Department presented Verification of Employment, showing that Respondent's first pay date was August 4, 2017 and that he continued to be employed and earning income through October 5, 2018.

In support of its contention that Respondent failed to report his employment and earnings, the Department presented an assistance application signed by Respondent and redetermination completed by Respondent and submitted to the Department on [redacted], 2016 and [redacted] 2017, respectively, which were prior to the alleged fraud periods and first employment period begin date. In signing and completing the application and redetermination, Respondent acknowledged being aware of the responsibility to accurately report his circumstances and to report changes in his circumstances to the Department, including changes in employment and income. The evidence showed that Respondent gained employment and began receiving income less than one week after completing the redetermination. A Health Care Coverage Determination Notice dated August 17, 2017 was also presented and further advised Respondent of his reporting responsibilities. At the time of the Health Care Coverage Determination Notice, Respondent had received income from his new employment. Furthermore, Respondent completed a Change Report on [redacted] 2017, during the period of his employment on which he reported his United States citizenship status but failed to disclose his earnings and income.

The Department's evidence showed that despite being advised of his reporting responsibilities with respect to his income and employment, Respondent failed to disclose his income to the Department. Upon review, the Department's evidence was sufficient to establish that Respondent was advised of his responsibility to report changes in circumstances on more than one occasion as well as the penalties for failing to do so. Because Respondent failed to accurately and timely report his employment and income to the Department, the Department's evidence establishes that Respondent intentionally withheld information and as a result received MA benefits he was not entitled to.

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. 7 CFR 273.18(a)(2); BAM 700, p. 1. The Department alleged that due to Respondent's failure to report his income, he received MA benefits that he was not entitled to receive. The Department alleged an OI of MA benefits in the amount of $5,062.86, based on the amount of MA payments made on Respondent's behalf for the period of November 1, 2017 to March 31, 2018 and May 1, 2018 to August 31, 2018, and sought to recoup the alleged OI.

As indicated above, the Department may initiate recoupment of an MA overissuance only due to client error or IPV, not when due to agency error. BAM 710 (October 2018), p. 1. Because Respondent failed to timely report income, the error resulting in overissued MA benefits in this case was a client error. Therefore, the Department may seek to recoup the MA overissuance.

The amount of a MA OI for an OI due to unreported income is the lesser of (i) the correct deductible amount (minus any amount already met) if there would have been deductible or a larger deductible or (ii) the amount of MA payments. BAM 710, pp. 1-2. In this case, the Department alleged that Respondent received MA benefits under the

Healthy Michigan Plan (HMP) category. HMP is a Modified Adjusted Gross Income (MAGI)-related MA category that provides MA coverage to individuals whose household income does not exceed 133% of the federal poverty level (FPL) applicable to the individual's group size under the Modified Adjusted Gross Income (MAGI) methodology. BEM 137 (April 2018), p. 1. A determination of group size under the MAGI methodology requires consideration of the client's tax status and dependents. The Department asserted that Petitioner's household size was one and that the monthly income limit for a household size of one through March 2018 was $1,336, and from April 2018 to October 2018 was $1,345.

To determine financial eligibility under HMP, income must be calculated in accordance with MAGI under federal tax law. MAGI is based on Internal Revenue Service rules and relies on federal tax information. BEM 500 (July 2017), pp. 3-4. Income is verified via electronic federal data sources in compliance with MAGI methodology. MREM, § 1. In determining an individual's eligibility for MAGI-related MA, 42 CFR 435.603(h)(2) provides that for current beneficiaries and "for individuals who have been determined financially-eligible for Medicaid using the MAGI-based methods . . . , a State may elect in its State plan to base financial eligibility either on current monthly household income . . . or income based on projected annual household income . . . for the remainder of the current calendar year."

Effective November 1, 2017, when determining financial eligibility of current beneficiaries for MAGI-related MA, the State of Michigan has elected to base eligibility on current monthly household income and family size. The State has also elected to use reasonable methods to include a prorated portion of a reasonably predictable increase in future income and/or family size and to account for a reasonably predictable decrease in future income and/or family size. (Medicaid State Plan Amendment Transmittal No.: MI-17-0100)

Respondent gained employment and began receiving income with a first pay date of August 4, 2017. In accordance with the reporting changes policy, the Department properly started the MA fraud period in November 2017. Pursuant to the policy above, Respondent would be ineligible for MA under the HMP for the period in which his monthly income was in excess of the income limit, as he was considered a current MA beneficiary at the time of the fraud period.

Upon review of the Department's evidence, including the verification of employment provided for the November 2017 to March 2018 and May 2018 to August 2018 fraud period, Respondent's monthly income was greater than the monthly income limit identified above based on his one-person group size. The Department established that the State of Michigan made $5,062.86 in MA payments to provide Respondent with MA coverage from November 2017 to March 2018 and May 2018 to August 2018. Based on the evidence presented, the Department is eligible to recoup and/or collect from Respondent an MA OI of $5,062.86, as he was ineligible for HMP due to excess income.

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 Respondent **did** receive an OI of program benefits in the amount of $5,062.86 from the MA program.

The Department is ORDERED to initiate recoupment/collection procedures for the MA OI amount of $5,062.86 in accordance with Department policy, less any amount already recouped/collected.

Zainab Baydoun

ZB/tm

Zainab A. Baydoun
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

Kimberly Kilmer
800 Watertower
Big Rapids, MI
49307

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

Respondent

[redacted]

cc: IPV-Recoupment Mailbox
L. Bengel