



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

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Date Mailed: February 11, 2020  
MOAHR Docket No.: 19-011015  
Agency No.: ██████████  
Petitioner: OIG  
Respondent: ██████████

**ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler**

**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 February 5, 2020 from ██████████ Michigan. The Department was represented by Chad Essebagggers, 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) Program 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 October 14, 2019 to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV by failing to report a change in residency.

2. Respondent was a recipient of continuing MA benefits issued by the Department after completing a Redetermination on November 17, 2017.
3. Respondent **did not have** an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
4. The Department's OIG indicates that the time period it is considering the fraud period is April 2018 through September 2018 (fraud period).
5. The Department alleges that during the fraud period, the Department issued \$1,533.15 in MA benefits on Respondent's behalf.
6. The Department alleges that during the fraud period, Respondent was not entitled to the benefit of those MA payments and is responsible for an MA overissuance totaling \$1,533.15.
7. 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 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 \$500.00 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 (October 2017), pp. 5, 12-13; ASM 165 (August 2016).

### **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 (October 2018), p. 8; BAM 720, p. 1.

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. BAM 720, p. 1.

An IPV requires that the Department establish by clear and convincing evidence that the client has intentionally withheld, misrepresented information, or withheld facts or committed any act constituting a violation of Supplemental Nutritional Assistance Program (SNAP) regulations or State statutes for the **purpose** of establishing, maintaining, using, presenting, transferring, receiving, possessing, trafficking, increasing or preventing reduction of program benefits or eligibility. BAM 720, pp. 1, 12-13 (emphasis in original); 7 CFR 273.16(c) and (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.

In this case, the Department alleges that Respondent intentionally failed to report her change in residency from Michigan to Texas resulting in an IPV and OI of MA benefits. To be eligible for MA, a person must be a Michigan resident. BEM 220 (April 2018), p. 1. For Medicaid cases, a Michigan resident is an individual who is living in Michigan except for a temporary absence. BEM 220, p. 2. 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. BEM 220, p. 2.

On November 17, 2017, Respondent signed a completed Redetermination and provided the form to the Department. At the time of the Redetermination, Respondent was living in [REDACTED], Michigan and provided no indication of an intent to leave Michigan. In addition, Respondent's signature on the Redetermination indicates that she understands she can review program rights and responsibilities at the website provided. On December 16, 2017, Respondent separated from her employment in Michigan, [REDACTED] in [REDACTED] (Employer 1), and informed Employer 1 the reason for her separation was that she moving out of state. On January 1, 2018, Respondent entered a domestic violence shelter in Texas. On January 8, 2018, Respondent submitted an Application for food assistance and cash assistance with the State of Texas. On the Application, she indicated that she was not receiving any food, cash, or medical assistance from any other state. On January 11, 2018, Respondent began employment in Texas with a different [REDACTED] (Employer 2) and provided a Texas address to the employer. She continued with Employer 2 until March 16, 2018 and received her final paycheck on April 2, 2018. On March 27, 2018, Respondent obtained a Texas Driver's License with a Texas address. On April 10, 2018, Respondent began new employment with [REDACTED] (Employer 3) in Texas and again provided the employer with an address in Texas. She continued with Employer 3 until January 18, 2019. On July 4, 2018, Respondent again applied for Texas food assistance. On this Application, she again indicated that no one in the home was receiving food, cash, or healthcare benefits from any other state. Both Texas Applications were signed under penalty of perjury. Finally, the Department showed that Respondent received and utilized Texas-issued food assistance benefits from January 10, 2018 through December 2, 2018.

Respondent was the beneficiary of Michigan-issued MA benefits from April 2018 through September 2018.

Despite a clear change in residency for Respondent, she never reported to the Department that she was no longer a Michigan resident or that her address had changed and continued to receive the benefit of Michigan-issued MA programs until September 2018. Given the significant period for which Respondent continued to receive Michigan MA benefits while living in Texas, and her two applications in Texas indicating she was not receiving any benefits from any other state, Respondent intentionally failed to inform the Department of her change in circumstances in order to maintain her MA coverage. Respondent has committed an IPV.

The Department initiates MA recoupment of an overissuance (OI) due to client error and IPVs, not when due to agency error. BAM 710 (January 2018), p. 1. Client errors occur when the client receives more benefits than they were entitled to because the client gave incorrect or incomplete information to the Department. BAM 700 (January 2018), p. 1. When the Department receives the amount of MA payments, it determines the OI amount. BAM 710, p. 1. For an OI due to any other reason other than unreported income or a change affecting need allowances, the OI amount is the amount of MA payments. BAM 710, p. 2.

As discussed above, Respondent failed to inform the Department that she moved to Texas. In this case, no evidence was presented that the absence was temporary and all evidence suggests that Respondent continued to live in Texas even after her Michigan MA benefits case was closed. Therefore, Respondent failed to show how her Michigan residency continued during the OI periods. Instead, the Department presented persuasive evidence showing that Respondent was not a Michigan resident during the OI period discussed above. Therefore, Respondent was not eligible for MA benefits during the OI period and a MA OI is present. BEM 220, pp. 1-2.

The Department presented a summary of the MA capitations paid for Respondent from April 2018 through September 2018 which totaled \$1,533.15. The OI period begins after consideration of (i) the 10-day client reporting period, per BAM 105; (ii) the 10-day full standard of promptness (SOP) for change processing, per BAM 220; and (iii) the 12-day full negative action suspense period; see BAM 220, Effective Date of Change. BAM 715 (October 2017), p. 5. Since Respondent applied for benefits in Texas effective January 8, 2018 and began work in Texas effective January 11, 2018, the Department could have begun the OI period effective March 1, 2018, but for whatever reason opted to begin it April 1, 2018. Since Respondent was not eligible for MA benefits based upon her residence, the Department has established an OI caused by Respondent's failure to report her move to Texas. Capitation reports submitted by the Department support MA benefits issued in the amount alleged. The Department is entitled to recoup \$1,533.15 for MA benefits previously issued.

### **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 received an MA OI totaling \$1,533.15 for the period April 2018 through September 2018.

