



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]
Date Mailed: February 21, 2020
MOAHR Docket No.: 19-011112
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 October 1, 2018 to January 31, 2019 (MA fraud period), the Department paid \$1,193.84 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 \$1,193.84.

2. On [REDACTED], 2018, Respondent signed and submitted a redetermination for her MA case. In signing the redetermination, Respondent acknowledged being aware of the responsibility to accurately report her circumstances and to report changes in her circumstances to the Department. (Exhibit A, pp. 8-15)
 - a. The Department sent Respondent a Health Care Coverage Determination Notice dated April 13, 2018 notifying her of her approval of MA benefits and again advising her of her reporting responsibilities. (Exhibit A, pp. 16-18)
3. The Department had no reason to believe that Respondent had a physical or mental impairment that would limit her understanding or ability to fulfill her responsibilities relating to the MA program.
4. On an unverified date, respondent applied for MA benefits in the State of New York. Through a collateral contact with authorities in New York, the Department obtained information indicating that Respondent received MA benefits from the State of New York from October 2018 through January 2019. (Exhibit A, pp. 19-20)
5. The Department alleged that Respondent was issued MA benefits from the State of New York at the same time that she received MA benefits issued by the State of Michigan and that she failed to report to the Department that she moved to New York, that she became a resident of that state and that she was receiving MA benefits from the State of New York.
6. The Department's OIG filed a hearing request on or around October 16, 2019, alleging that Respondent failed to report her change in address and residency and that she was receiving MA benefits from two states at the same time. As a result, the Department alleged that Respondent received MA benefits from the State of Michigan that she was ineligible to receive, causing a MA OI of \$1,193.84. The Department requested a recoupment of the MA OI.
7. A Notice of Hearing was mailed to Respondent at her 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 notify the Department that her address changed and that she moved to New York. Additionally, the Department asserted that Respondent applied, was approved, and began receiving MA benefits in the State of New York at the same time that she received Michigan issued MA benefits. The Department maintained that this caused an OI of Michigan MA benefits. Clients must report changes, such as changes in address to the Department within 10 days after the client is aware of them. BAM 105 (January 2018), pp. 12-13. A person must be a Michigan resident to receive MA issued by the Department. BEM 220 (April 2018), p. 1. For MA purposes, an individual is a Michigan resident if living in Michigan except for a temporary absence. 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, pp. 1-2. Additionally, concurrent receipt of benefits means assistance received from multiple programs to cover a person's needs for the same time period. Benefit duplication means assistance received from the same or same type of program to cover a person's needs for the same month.

Concurrent receipt and benefit duplication are prohibited except in limited circumstances. BEM 222 (October 2018), p. 1.

In support of its position, the Department presented a redetermination signed by Respondent and submitted to the Department on [REDACTED], 2018, on which she acknowledged being aware of the responsibility to accurately report her circumstances and to report changes in her circumstances to the Department. The Department contended that Respondent's failure to report her move to New York and her establishment of New York residency caused an OI of MA benefits in the amount of \$1,193.84 from October 2018 through January 2019. The Department presented evidence that, while Respondent was living in Michigan at the time of her April 2018 MA redetermination and approval for MA benefits in the State of Michigan, she applied and was approved for MA benefits in New York from October 1, 2018 throughout the remainder of the fraud period, at which time her Michigan MA case was closed. The Department asserted that because Respondent received MA from two states at the same time and because she failed to report to the Department that she moved to New York, she was overissued MA benefits issued by the State of Michigan.

The Department testified that throughout the course of its investigation, it conducted an interview with Respondent on or around October 7, 2019 during which, she confirmed that she had been living in New York for about one year and asserted that she called and left voice messages for her Department case work to advise that she had moved to the State of New York. During the interview, Respondent further reported that she assumed her MA case in Michigan had closed when she began receiving MA in New York. It was unclear when Respondent asserted she notified the Department of her move and whether it was within the required ten day reporting period required. There was no evidence that Respondent submitted a change report or other written notification to the Department to advise of her change in address/residency. Furthermore, Respondent was not present for the hearing and thus, the credibility of the statements she made to the OIG during the October 2019 interview could not be assessed.

Upon review, the Department's evidence was sufficient to establish that Respondent was advised of her responsibility to report changes in her circumstances as well as the penalties for failing to do so, including potential repayment of overissued benefits. Because Respondent failed to accurately and timely report her change in address and residency, as well as her receipt of MA from two states at the same time, the Department's evidence establishes that Respondent withheld information and as a result received MA benefits she was not entitled to.

When a client group receives more benefits than entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. The Department alleged an OI of MA benefits in the amount of \$1,193.84, based on the amount of MA payments made on Respondent's behalf for the period of October 1, 2018 to January 31, 2019, 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 changes in circumstances and received duplicate assistance, 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 Department's evidence was sufficient to establish that Respondent was not a Michigan resident for MA purposes during the fraud period and further, that she received MA benefits from two states at the same time. The amount of an MA OI for an OI due to any reason other than unreported income or a change affecting need allowances is the amount of MA payments. BAM 710, pp. 1-2. The Department established that the State of Michigan paid \$1,193.84 in MA payments to provide Respondent with MA coverage from October 2018 through January 2019, the period in which she was no longer considered to be a resident of the State of Michigan and received MA from New York and Michigan. Based on the evidence presented, the Department is eligible to recoup and/or collect from Respondent an MA OI of \$1,193.84.

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 \$1,193.84 from the MA program.

The Department is ORDERED to initiate recoupment/collection procedures for the MA OI amount of \$1,193.84 in accordance with Department policy, less any amount already recouped/collected.

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

Linda Gooden
25620 W. 8 Mile Rd
Southfield, MI
48033

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

Respondent

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

cc: IPV-Recoupment Mailbox
L. Bengel