



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] KY [REDACTED]

Date Mailed: March 10, 2020
MOAHR Docket No.: 19-013484
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

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 March 5, 2020 from Detroit, Michigan. The Department was represented by Stephanie Janowiak, Regulation Agent of the Office of Inspector General (OIG). Respondent appeared at the hearing and represented herself.

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 November 20, 2019, to establish an OI of MA benefits received by Respondent as a result of Respondent having allegedly committed an IPV.
2. Respondent and her family were a recipient of MA benefits issued by the Department between November 2016 through February 2017.
3. Respondent **was** informed of the responsibility to report changes in household circumstances to the Department via her Application dated [REDACTED] 2015, as well

as the Health Care Coverage Determination Notice (HCCDN) dated January 4, 2016.

4. Respondent **did not have** an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
5. The Department's OIG indicates that the time period it is considering the fraud period is November 2016 through February 2017 (fraud period).
6. During the fraud period, the Department issued \$2,615.10 in MA benefits on Respondent's and her family's behalf to which the Department says they were not entitled.
7. The Department alleges that Respondent is responsible for an overissuance of MA benefits equal to the value of MA benefits issued on the family's behalf or \$2,615.10.
8. 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 committed an IPV concerning her MA benefits because she intentionally failed to update her residency with the Department and received concurrent benefits in Michigan and Kentucky. To be eligible for MA benefits issued by the Department, a person must be a Michigan resident. BEM 220 (January 2016), p. 1. A Medicaid recipient, must be a Michigan resident which is defined as 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. As an example, policy allows that individuals who spend the winter months in a warmer climate and return to their home in the spring, remain Michigan residents during the winter months. BEM 220, p. 2.

Respondent filed an Application for Food Assistance Program (FAP) and MA benefits on J [REDACTED] 2015 with the State of Michigan. By signing the Application, she acknowledged her rights and responsibilities as a program recipient including the obligation to report changes in household circumstances such as address or residency. On June 30, 2015, the Department issued a Health Care Coverage Determination Notice (HCCDN) to Respondent informing her that her son was eligible for full coverage MA benefits for November and December 2014. The HCCDN also reminded Respondent of the responsibility to report changes in circumstances to the Department. A similar HCCDN was issued on January 4, 2016 regarding Respondent's and one of her children's MA benefits effective February 2016 through January 2017. Again it reminded her of her responsibility to report. Respondent received MA benefits from November 2016 through January 2017. Both of her children received MA benefits from November 2016 through February 2017.

After being alerted by a PARIS Match in December 2018, the Department discovered that Respondent and her children were receiving medical assistance benefits from Kentucky. On October 31, 2019, the Department confirmed with a representative from the State of Kentucky that Respondent and one of her children had received MA benefits from Kentucky from November 2016 through May 2019. Kentucky had no records of Respondent's other son receiving MA benefits from Kentucky. Kentucky also provided the Department with the last known address for Respondent which was confirmed via a Final Account Statement from the landlord at The Oaks at St. Andrews. Respondent had moved to Kentucky and leased an apartment effective November 11, 2016.

Respondent advised the Regulation Agent that she informed her caseworker of the move, but the Regulation Agent was unable to substantiate Respondent's claims with any documentation from her case file.

Based upon the evidence presented, the Department has met its burden of proof by clear and convincing evidence that Respondent committed an IPV by failing to disclose her change in residency and concurrent receipt of MA benefits.

Overissuance

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 initiates MA

recoupment of an overissuance (OI) due to client error and IPV, not when due to agency error. BAM 710 (October 2016), 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 about her and her son's receipt of Kentucky medical assistance benefits resulting in benefits from both Kentucky and Michigan at the same time. Department records show that the Department issued MA benefits on Respondent's behalf from November 2016 through January 2017 and for her son from November 2016 through February 2017. Kentucky records show that Respondent and her son received the benefits of the Kentucky medical assistance program beginning November 2016 and continuing into May 2019. The total amount of MA benefits issued by Michigan during the fraud period for Respondent was \$1,210.60 and for her son was \$609.40. Since neither Respondent nor her son were entitled to to the benefits issued in both states at the same time, the Department has established a debt. The Department presented no evidence of concurrent receipt for Respondent's other son. Furthermore, the Department presented no evidence that the other son was in Respondent's custody or living outside of Michigan. Therefore, any OI attributable to Respondent's other son is removed from the total value of the OI. The Department has established an OI totaling \$1,820.00 for Respondent's and one son's MA benefits.

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. The Department has established a claim for overissued MA benefits in the amount of \$1,820.00.

The Department is ORDERED to reduce the OI to \$1,820.00 for the period November 2016 through February 2017, and initiate recoupment/collection procedures in accordance with Department policy.

AMTM/jaf



Amanda M. T. Marler

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

LaClair Winbush
MDHHS-Wayne-31-Hearings
L Bengel
Policy Recoupment

Petitioner

MDHHS-OIG-Hearings

Respondent

[REDACTED]
[REDACTED]
[REDACTED] KY [REDACTED]