



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: April 18, 2019
MAHS Docket No.: 19-001612
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: John Markey

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 April 15, 2019, from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). Respondent appeared and represented herself. During the hearing, a 26-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-26.

ISSUES

1. Did Respondent receive an overissuance (OI) of Medicaid (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) with respect to MA?

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 an ongoing recipient of MA benefits from the Department in a group that included herself and her son, [REDACTED].
2. On May 9, 2016, [REDACTED] was designated as active duty in the United States Marine Corps. Exhibit A, pp. 17-18.

3. On [REDACTED] 2016, Respondent submitted to the Department a completed Redetermination form. On that form, Respondent was asked whether [REDACTED] had moved out of the home. Respondent indicated that [REDACTED] was still in the home. Respondent signed the Redetermination, thereby certifying the truth of the information contained therein. Exhibit A, pp. 19-24.
4. [REDACTED] continued to be covered by the Department-issued MA until [REDACTED] 2017. Exhibit A, pp. 25-26.
5. On February 1, 2019, the Department's OIG filed a hearing request to establish an IPV with respect to MA. The Department considers the alleged fraud period to be July 1, 2016, through August 31, 2017. During that time, the Department expended \$2,583.27 in MA benefits on [REDACTED] behalf. The Department asserts that [REDACTED] was not entitled to any MA coverage during those two months as he was no longer in Respondent's household. The Department's hearing request sought to establish an overissuance of MA benefits of \$2,583.27. Exhibit A, pp. 1-6; 25-26.
6. During the hearing, Respondent testified that she signed and returned the Repayment Agreement, Form 4350, acknowledging that she owed the Department \$2,583.27 and would pay back the benefits at a rate of \$50 per month. However, the Department did not receive the signed form.
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.

The Department's position is that Respondent committed an IPV with respect to MA by allegedly failing to report when [REDACTED] moved out of the house, causing the Department to overissue Respondent MA benefits for [REDACTED] MA coverage for the period from July 1, 2016, through August 31, 2017.

Overissuance

An overissuance is the amount of benefits issued to the client group in excess of what it was eligible to receive. BAM 700 (October 2016), p. 1; 7 CFR 273.18. When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, p. 1; 7 CFR 273.18. To be eligible under the same MA benefits case, individuals must be a member of the same household. BEM 211 (January 2016), p. 1.

In this case, Respondent's group received more benefits than it was entitled to receive. Respondent's son, [REDACTED], moved out of the household on or about May 9, 2016. However, the Department continued to provide [REDACTED] with MA coverage through [REDACTED], 2017, under Respondent's MA benefits case. Because [REDACTED] was not eligible to receive those benefits, all benefits issued after July 1, 2016, are considered an overissuance. The overissuance value was shown to be \$2,583.27. As the overissuance was not the cause of an agency error, the Department may recoup and/or collect the overissuance from Respondent. BAM 710 (October 2016), p. 1.

Intentional Program Violation

The Department's policy in effect at the time of Respondent's alleged IPV defined an IPV as an overissuance in which the following three conditions exist: (1) the client intentionally failed to report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination; (2) the client was clearly and correctly instructed regarding his or her reporting responsibilities; and (3) the client has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill his or her reporting responsibilities. BAM 720 (January 2016), p. 1; 7 CFR 273.16(c).

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, page 1; see also 7 CFR 273.16(e)(6). Clear and convincing evidence is evidence which is so clear, direct, weighty, and convincing that it enables a firm belief as to the truth of the allegations sought to be established. *In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995) (citing *In re Jobes*, 108 NJ 394 (1987)).

Respondent was required to report changes in her circumstances to the Department within 10 days of the date of the change. BAM 105 (October 2016), pp. 11-12. Furthermore, Respondent was required to truthfully and completely answer all questions on forms and interviews. BAM 105, p. 9. The Department alleges that Respondent breached these duties by failing to report [REDACTED] not being in the home on the Redetermination she returned on [REDACTED] 2016, and failing at any time to report that [REDACTED] had moved out of the home.

The Department, however, has not met its burden of proof in this matter. Respondent credibly testified that she did not report that ██████ had moved out on the Redetermination because he was only, at that point, temporarily out of the house. She was understandably confused about his status and improperly marked him as still being in the home. Given the uncertainty regarding his status, Respondent's testimony is reasonable and credible. Thus, Respondent did not commit an intentional program violation by reporting on the ██████ 2016, Redetermination that ██████ was still in the house.

Additionally, Respondent did not commit an intentional program violation by failing to report within 10 days that ██████ had left the house. While Respondent was required to report changes in her circumstances within 10 days of the date of the change, there was no evidence in the record that Respondent was informed of this duty. In order to sustain an intentional program violation finding, the Department must meet each of the elements of the action, one of which is proving that the Department provided instructions regarding the reporting requirements. As no instructions were provided, the Department cannot establish an intentional program violation for failing to follow the absent instructions. Accordingly, the Department has failed to meet its burden of showing by clear and convincing evidence that Respondent committed an intentional program violation with respect to MA.


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 failed to establish by clear and convincing evidence that Respondent committed an IPV with respect to his MA benefits.
2. The Department has established an overissuance of MA benefits that it has the right to recoup and/or collect in the amount of \$2,583.27.

IT IS ORDERED that the Department may initiate recoupment and/or collection procedures for the total overissuance amount of \$2,583.27 established in this matter, less any amounts already recouped or collected.

JM/cg



John Markey
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 Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS 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. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

Via Email:

MDHHS-Wayne-19-Hearings
OIG Hearings
Recoupment
MAHS

Respondent – Via First-Class Mail:

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