



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: September 10, 2019
MOAHR Docket No.: 19-004407
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Ellen McLemore

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 August 21, 2019, from Detroit, Michigan. The Department was represented by Julie Price, 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

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. The Department's OIG filed a hearing request on [REDACTED], 2019, to establish an OI of MA benefits received by Respondent.
2. The OIG has not requested that Respondent be disqualified from receiving program benefits.
3. Respondent was a recipient of MA benefits issued by the Department.

4. Respondent was aware of the responsibility to report changes in circumstances, including changes in employment/income.
5. The Department was not aware of Respondent having an apparent physical or mental impairment that would limit the understanding or ability to fulfill this responsibility.
6. The Department's OIG indicates that the time period it is considering the fraud period (fraud period) is December 1, 2016 through January 31, 2017.
7. The Department alleges that during the fraud period, the Department paid \$636.73 in MA benefits on behalf of Respondent, but Respondent was not entitled to any MA benefits.
8. The Department alleges that Respondent received an OI in MA benefits in the amount of \$636.73.
9. A notice of hearing was mailed to Respondent at the 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.

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 overissuances 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 or more, or
- the total amount is less than \$500, 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 (January 2016), p. 5.

An IPV results in a client's disqualification from program benefit recipients other than MA; there is no disqualification for an MA IPV. BAM 720, pp. 15-16.

In this case, the Department alleges that Respondent was overissued MA benefits. Department policy provides that the Department may initiate recoupment of an MA OI due to client error or IPV, not when due to agency error. BAM 710 (October 2016), 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 (October 2016), p. 5. An IPV is suspected when there is 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, p. 1. Federal regulations define an IPV as intentionally: (1) made a false or misleading statement, or misrepresented, concealed or withheld facts; or (2) committed any act that constitutes a violation of the Supplemental Nutrition Assistance Program (SNAP), SNAP regulations, or any state statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing for trafficking of SNAP benefits or Electronic Benefit Transfer (EBT) cards. 7 CFR 273.16(c). 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.

The Department alleges that there was an MA overissuance due to client error or IPV because Respondent failed to report his income from employment, and as a result, he continued to maintain MA benefits for which he was not entitled. The Department testified that Respondent exceeded the income limit under the Healthy Michigan Plan (HMP) program, which was the only MA program for which he qualified.

In support of its contention that Respondent received an MA overissuance due to client error or IPV, the Department presented redetermination submitted by Respondent on October 5, 2015. The Department asserts that when completing the redetermination process, Respondent acknowledged that he had received the Information Booklet advising him regarding "Things You Must Do" which explained reporting change circumstances including employment.

The Department also presented a Work Number report from Respondent's income at [REDACTED]. The document shows that Respondent obtained employment and received his first paycheck on September 30, 2016. Respondent was employed and consistently receiving earnings throughout the remainder of the fraud period.

An individual is eligible for HMP if his household's income does not exceed 133% of the Federal Poverty Level (FPL) applicable to the individual's group size. BEM 137 (October 1, 2016), p. 1. According to the MA-EDG Summary, Respondent had a group size of 1.133% of the annual FPL in 2016 for a group size of one was \$16,394.40 with the 5% disregard or \$1,366.20 per month. BEM 500 (July 2017), p. 5. 133% of the annual FPL in 2017 for a group size of one was \$16,642.80 with the 5% disregard or \$1,386.90 per month. BEM 500 (July 2017), p. 5.

In order to determine income in accordance with MAGI, a client's adjusted gross income (AGI) is added to any tax-exempt foreign income, tax-exempt Social Security benefits, and tax-exempt interest. AGI is found on IRS tax form 1040 at line 37, form 1040 EZ at line 4, and form 1040A at line 21. Alternatively, it is calculated by taking the "federal taxable wages" for each income earner in the household as shown on the paystub or, if not shown on the paystub, by using gross income before taxes reduced by any money the employer takes out for health coverage, child care, or retirement savings. This figure is multiplied by the number of paychecks the client expects in 2017 to estimate income for the year. See <https://www.healthcare.gov/income-and-household-information/how-to-report/>.

Per the Work Number, Respondent's income exceeded the income limit under the HMP program in December 2016 and January 2017. Therefore, the Department properly established that Petitioner was not eligible for MA benefits under the HMP program.

For an MA OI due to unreported income or a change affecting need allowances: (i) If there would have been a deductible or larger deductible, the OI amount is the correct deductible (minus any amount already met) or the amount of MA payments, whichever is less or (ii) If there would have been a larger LTC, hospital or post-eligibility patient-pay amount, the OI amount is the difference between the correct and incorrect patient-pay amounts or the amount of MA payments, whichever is less. BAM 710 (October 2016), p. 2. For an OI due to any other reason, the OI amount is the amount of MA payments. BAM 710, p. 2.

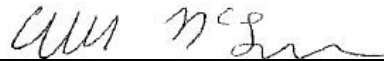
The Department testified that during the fraud period, Respondent was not the caretaker of any minor children and had not been determined as disabled by a state or federal agency. Therefore, Respondent was not eligible for any MA program with a monthly deductible or patient pay amount. BEM 105 (October 2016), p. 1. Therefore, to calculate the OI, the Department should use the amount of the MA payments. The Department presented a Medicaid Summary report showing the premiums and capitations paid on behalf of Respondent. The sum of these expenses is \$636.73. Therefore, the Department is entitled to recoup and/or collect from Respondent a MA OI of \$636.73.

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 MA OI.

The Department is ORDERED to initiate recoupment and/or collection procedures for the MA OI in the amount of \$636.73, less any amounts already recouped and/or collected, in accordance with Department policy.

EM/cg



Ellen McLemore

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

Via Email:

MDHHS-Eaton-Hearings
OIG Hearings
Recoupment
MOAHR

Respondent - Via First-Class Mail:

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