



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: October 21, 2019
MOAHR Docket No.: 19-005436
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 October 9, 2019, from Detroit, Michigan. The Department was represented by Dana Mikko, Regulation Agent of the Office of Inspector General (OIG). Respondent was present and represented himself.

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 May 1, 2017 through January 31, 2018.
7. The Department alleges that during the fraud period, the Department paid \$4,288.06 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 \$4,288.06.
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 (October 2017), 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.

In support of its contention that Respondent received an MA overissuance as a result of client error or IPV, the Department presented an application submitted by Respondent on March 6, 2017. The Department asserts that when completing the application process, Respondent acknowledged that he had received the Information Booklet advising him regarding "Things You Must Do," which explained reporting changes in circumstances, including employment. The Department also presented a Health Care Coverage Determination Notice sent to Respondent on March 6, 2017, further advising him of his reporting responsibilities.

Additionally, the Department presented an employment verification showing Respondent received a paycheck on May 4, 2017 and was continuously paid throughout the remainder of the fraud period.

Respondent testified that he reported his change in employment/income to the Department. Respondent stated that he contacted his worker and left a voicemail stating that he was employed. Respondent stated he received a letter notifying him of

his benefit program closure shortly after he reported his return to work. Respondent was unsure as to whether the notice was related to his MA benefit case or his Food Assistance Program (FAP) benefit case.

The Department did not provide Respondent's Electronic Case File (ECF). The ECF consists of scanned documents, arranged by category and identified by a client name, recipient ID or case number, established for a particular client group. BAM 300 (October 2016), p. 1. The ECF contains all forms, documents and other evidence to the group's current and past eligibility. BAM 300, p. 1. The Department also did not present the case comments from Respondent's casefile during the period in question. In the absence of such evidence, the Department failed to establish that Respondent failed to properly notify the Department of the change in income/employment. As such, the Department failed to establish that the MA overissuance was a result of client error or IPV, and not agency error. Therefore, per policy, the Department cannot seek an MA overissuance.

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 the Department failed to establish that Respondent received an MA overissuance as a result of client error or IPV.

The Department is ORDERED to delete the OI and cease any recoupment and/or collection action.

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-Montcalm-Hearings
OIG Hearings
Recoupment
MOAHR

Respondent – Via First-Class Mail:

██████████
████████████████████
████████████████████