



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 11, 2019  
MOAHR Docket No.: 19-006172  
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 (ALJ) 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 3, 2019, from Detroit, Michigan. The Department was represented by Julie Price, Regulation Agent of the Office of Inspector General (OIG). Respondent was present with her husband, [REDACTED].

### **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 September 1, 2016 through February 28, 2017.
7. The Department alleges that during the fraud period, the Department paid \$2,269.92 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 \$2,269.92.
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.

In support of its contention that Respondent received an MA overissuance as a result of client error or IPV, the Department presented a redetermination submitted by Respondent on October 18, 2015. The Department asserts that when completing the redetermination process, Respondent acknowledged that she had received the Information Booklet advising her regarding "Things You Must Do," which explained reporting changes in circumstances, including employment. The Department also presented an employment verification showing Respondent received a paycheck from Red Robin on July 1, 2016 and was continuously paid throughout the remainder of the fraud period.

Respondent testified that she and her husband were employed at the time she completed the October 18, 2015 redetermination. When asked why there was no reported income for the household listed in the redetermination, Respondent testified that she was unsure how that occurred. Respondent stated that she always reported and verified her income.

Respondent's testimony that she would not intentionally conceal information from the Department was credible. However, Respondent and her husband were working at the time Respondent completed the October 18, 2015 redetermination. Respondent reported that there was no household income. Although Respondent may have inadvertently answered the income question incorrectly, the client is responsible for ensuring the correct information is provided to the Department. As such, the Department may seek an MA overissuance as a result of client error.

For an MA overissuance 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.

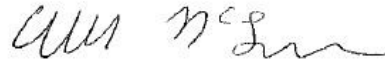
The Department presented documentation showing that Respondent was receiving MA benefits under the Healthy Michigan Plan (HMP) program during the period of September 1, 2016 through February 28, 2017. The Department presented evidence that Respondent's income placed her over the income limit under the HMP program, and therefore, she was not entitled to those benefits. However, as Respondent had a minor child in the home, she would have been eligible for MA benefits under the Group 2 Caretaker (G2C) program subject to a deductible. BEM 135 (October 2015), p. 1. Per policy, for an MA overissuance due to unreported income, the MA overissuance amount is the correct deductible (minus any amount already met) or the amount of MA payments, whichever is less. BAM 710, p. 2. The Department provided evidence as to the amount of Respondent's MA payments but did not present any information as to the amount of her deductible under the G2C program. Therefore, the undersigned ALJ is unable to determine if the MA payment method is the lesser of the two, and that the overissuance amount was correctly calculated. As such, the Department failed to establish that Respondent was overissued MA benefits in the amount of \$ 2,269.92.

**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 in the amount of \$2,269.92.

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

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**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-Clinton-Hearings  
OIG Hearings  
Recoupment  
MOAHR

**Respondent – Via First-Class Mail:**

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