



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: August 26, 2019
MOAHR Docket No.: 19-006860
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 August 19, 2019, from Detroit, Michigan. The Department was represented by [REDACTED], Regulation Agent of the Office of Inspector General (OIG). Respondent did not appear at the hearing. The hearing 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). During the hearing, a 49-page packet of documents was offered and admitted into evidence as Exhibit A, pp. 1-49.

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)?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. On [REDACTED], 2015, Respondent's filed with the Department an application for MA benefits. Exhibit A, pp. 9-34.

2. On the application to the Department, Respondent indicated that she lived in [REDACTED], Michigan. Exhibit A, p. 11.
3. By signing the application, Respondent certified that she received, reviewed, and understood the information contained within the DHHS publication titled "Things You Must Do." Exhibit A, p. 16.
4. "Things You Must Do" advised Respondent that she was required to report any changes in address or moving out of the state of Michigan within 10 days and that an intentional failure to do so violated the law and if proven, would result in criminal and/or civil penalties, including disqualification from the program. Exhibit A, pp. 17-18.
5. Respondent's application was approved, and the Department thereafter began providing MA coverage to Respondent. Exhibit A, pp. 47-49.
6. In July 2016, Respondent began a job working for [REDACTED] in Texas. Respondent provided a Texas address to [REDACTED] as her residence. Respondent only worked at that job for a maximum of a couple of weeks. Exhibit A, pp. 25-37.
7. In August 2016, Respondent began receiving Food Assistance Program (FAP) benefits from the State of Texas. Exhibit A, p. 39.
8. On [REDACTED], 2016, Respondent filed a change report with the Department informing the Department that she was homeless. Exhibit A, pp. 43-46.
9. In August 2017, Respondent began working for [REDACTED] and provided to that employer a Texas home address. Respondent continuously worked there through at least January 2018. Exhibit A, pp. 40-42.
10. Respondent never reported the move to the Texas to the Department.
11. The Department's OIG filed a hearing request on June 19, 2019, to establish an overissuance of benefits received by Respondent as a result of Respondent having allegedly committed an IPV by receiving MA benefits from Michigan after moving out of state. Exhibit A, pp. 1-7.
12. This was Respondent's first alleged IPV. Exhibit A, pp. 1-7.
13. The Department's OIG indicates that the time period it is considering the fraud period is August 1, 2016 through February 28, 2018, during which the Department dispensed \$5,320.10 in MA benefits. Exhibit A, pp. 1-7, 47-49.
14. A Notice of Hearing was mailed to Respondent at the last known address and was not returned by the United States Postal Services 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), 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 in this matter is that Respondent's failure to report her move out of state while continuing to be covered by Michigan's MA amounted to an Intentional Program Violation (IPV) with respect to MA.

Overissuance

Only residents of Michigan are eligible to receive benefits from the Department. BEM 220 (January 2016), p. 1. When an ineligible client is issued benefits or an eligible client is issued more benefits than the client is entitled, the Department must attempt to recoup the OI. BAM 700 (January 2016), p. 1.

In this case, the Department showed by clear and convincing evidence that Respondent was a Texas resident as of June 2016. That conclusion is based on the fact that Respondent obtained a job in Texas during that month and applied for public benefits from Texas within a couple of months thereafter. There is no evidence to suggest that Respondent regained her Michigan residency at any point thereafter. However, there is evidence that she continued to live in Texas, including her subsequent employment.

Thus, Respondent was no longer a Michigan resident and was ineligible to receive benefits. However, because of Respondent's failure to report her move to Texas, the Department paid out \$5,320.10 in MA benefits on Respondent's case. As Respondent was ineligible to receive those benefits, they are considered an overissuance. In total, the overissuance was \$5,320.10.

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.

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, p. 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)).

In this case, the Department has met its burden. Respondent was required to report changes in her circumstances to the Department within 10 days of the date of the change. BAM 105 (April 2016), pp. 11-12. The Department clearly and correctly instructed Respondent to report changes to the Department within 10 days. Respondent failed to report that she moved out of state within 10 days of the date she moved. Respondent's failure to report this change to the Department must be considered an intentional misrepresentation to maintain her MA benefits since Respondent knew or should have known that she was required to report the change to the Department and that reporting the change to the Department would have caused the Department to stop issuing her MA coverage. Respondent did not have any apparent physical or mental impairment that would limit her understanding or ability to fulfill her reporting requirement.

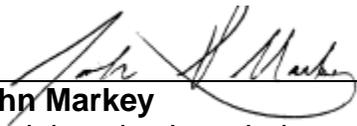
DECISION AND ORDER

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 paid an overissuance of MA benefits in the amount of \$5,320.10 that the Department is entitled to recoup and/or collect.
2. The Department has established by clear and convincing evidence that Respondent committed an IPV with respect to her MA benefits.

IT IS ORDERED that the Department may initiate recoupment and/or collection procedures for the total overissuance amount of \$5,320.10 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 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-Genesee-Clio-Hearings
OIG Hearings
Recoupment
MOAHR

Respondent – Via First-Class Mail:

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