



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], AZ [REDACTED]

Date Mailed: September 18, 2019
MOAHR Docket No.: 19-006967
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on September 10, 2019, from Lansing, Michigan. The Department was represented by Thomas Lilienthal, 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

1. Did Respondent receive an overissuance (OI) of Medical Assistance (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 an application for assistance dated [REDACTED] [REDACTED] 2015, Respondent acknowledged her duties and responsibilities including the duty to report changes of residency and the receipt of benefits from another state. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 11-31.

2. On a Redetermination (DHS-1010) form received by the Department on March 2, 2016, Respondent again acknowledged the duties and responsibilities of receiving Medical Assistance (MA) benefits. Exhibit A, pp 39-44.
3. Respondent acknowledged under penalties of perjury that her March 2, 2016, redetermination form was examined by or read to her, and, to the best of her knowledge, contained facts that were true and complete. Exhibit A, pp 39-44.
4. Respondent reported on a Redetermination (DHS-1010) form received by the Department on March 2, 2016, that she was living in Michigan. Exhibit A, pp 39-44.
5. Respondent received Medical Assistance (MA) benefits with a value of \$2,379.99 from October 1, 2016, through March 31, 2017. Exhibit A, pp 85-90.
6. On January 23, 2017, the Department sent a Health Care Coverage Determination to Respondent addressed to the mailing address listed on her March 2, 2016, Redetermination (DHS-1010) form, but it was returned by the US Postal Service as undeliverable. Exhibit A, p 45.
7. On [REDACTED] [REDACTED] 2016, Respondent filed an application for medical assistance with the state of New Mexico. Exhibit A, pp 46-73.
8. Respondent received medical assistance benefits from the state of New Mexico from October 1, 2016, through May 31, 2019. Exhibit A, p 91.
9. The Department's OIG filed a hearing request on June 13, 2019, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 3.
10. On June 13, 2019, the Department sent the Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$2,379.99 overpayment, and a Request for Waiver of Disqualification Hearing (DHS-826). Exhibit A, pp 6-8.
11. 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), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

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 OIG requests IPV hearings for the following cases:

- FAP trafficking OIs 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 OI amount for the FIP, SDA, CDC, MA and FAP programs is \$500 or more, or
 - the total OI 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.

Department of Health and Human Services Bridges
Administrative Manual (BAM) 720 (October 1, 2017), pp 12-13.

Overissuance

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. Department of Human Services Bridges Administrative Manual (BAM) 700 (October 1, 2018), p 1.

Concurrent receipt of benefits means assistance received from multiple programs to cover a person's needs for the same time period. Benefit duplication means assistance received from the same (or same type of) program to cover a person's needs for the same month. Benefit duplication is prohibited except for MA and FAP in limited circumstances. Department of Health and Human Services Bridges Eligibility Manual (BEM) 222 (October 1, 2018), p 3.

On an application for assistance dated [REDACTED] [REDACTED] 2015, Respondent acknowledged the duties and responsibilities of receiving MA benefits. On a Redetermination (DHS-1010) form received by the Department on [REDACTED] [REDACTED] 2016, Respondent again acknowledged the duties and responsibilities of receiving MA benefits. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Respondent acknowledged under penalties of perjury that her [REDACTED] [REDACTED] 2016, redetermination form was examined by or read to her, and, to the best of her knowledge, contained facts that were true and complete. Respondent reported that she was living in Michigan on her [REDACTED] [REDACTED] 2016, Redetermination form.

On [REDACTED] [REDACTED] 2016, Respondent filed an application for medical assistance with the state of New Mexico. The state of New Mexico approved Respondent's application and she received New Mexico medical assistance from October 1, 2016, through May 31, 2019.

Respondent was an active Michigan MA recipient from October 1, 2016, through March 31, 2017. These benefits were received concurrently with the medical assistance she was receiving from the state of New Mexico. During that period, Respondent received MA benefits with a value of \$2,379.99, and she was not eligible for any of those benefits while a recipient of concurrent medical assistance from another state. Therefore, Respondent received a \$2,379.99 overissuance of Michigan MA benefits.

Intentional Program Violation

Suspected IPV means an OI exists for which all three of the following conditions exist:

- The client intentionally failed to report information **or** intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, and
- The client was clearly and correctly instructed regarding the reporting responsibilities, and
- The client has no apparent physical or mental impairment that limits the understanding or ability to fulfill reporting responsibilities.

BAM 700, p 7, BAM 720, p. 1.

An IPV is also suspected for a client who is alleged to have trafficked FAP benefits. BAM 720, 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 (emphasis in original); see also 7 CFR 273.16(e)(6).

The Department has the burden of establishing by clear and convincing evidence that the Respondent committed an Intentional Program Violation (IPV). The clear and convincing evidence standard, which is the most demanding standard applied in civil cases, is established where there is evidence so clear, direct and weighty and convincing that a conclusion can be drawn without hesitancy of the truth of the precise facts in issue. *Smith v Anonymous Joint Enterprise*, 487 Mich 102; 793 NW2d 533 (2010), reh den 488 Mich 860; 793 NW2d 559 (2010).

Clear and convincing proof is that which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the precise facts in issue. Evidence may be uncontroverted and yet not be clear and convincing. Conversely, evidence may be clear and convincing even if contradicted. *Id.*

Respondent acknowledged the duties and responsibilities of receiving MA benefits including reporting a change of residency and the receipt of concurrent benefits from another state. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. While an active recipient of Michigan MA benefits, Respondent went to New Mexico, applied for New Mexico medical assistance, and received New Mexico medical assistance from October 1, 2016, through May 31, 2019. Respondent was not eligible for any of the Michigan MA benefits she received while concurrently receiving New Mexico medical assistance.

This Administrative Law Judge finds that the Department has presented clear and convincing evidence that Respondent intentionally failed to report to the Department that she had moved to New Mexico and was receiving medical assistance in New Mexico for the purposes of maintaining her eligibility for Michigan MA benefits that she would not have been eligible for otherwise.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 15-16. A disqualified recipient remains a member of an active group as long as the disqualified person lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (January 1, 2018), p. 2.

The Department has established an Intentional Program Violation (IPV).

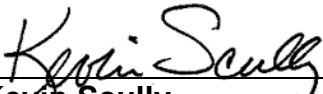
DECISION AND ORDER

The Administrative Law Judge, based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV.

2. Respondent did receive an OI of Medical Assistance (MA) benefits in the amount of \$2,379.99.
3. The Department is ORDERED to initiate recoupment procedures for the amount of \$2,379.99 in accordance with Department policy.

KS/hb



Kevin Scully
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

DHHS

Lacey Whitford
1919 Parkland Drive
Mt. Pleasant, MI 48858

Isabella County, DHHS

Policy-Recoupment via electronic mail

L. Bengel via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

Respondent

[REDACTED]
[REDACTED], AZ [REDACTED]