



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

ORLENE HAWKS
DIRECTOR

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Date Mailed: February 11, 2020
MOAHR Docket No.: 19-010788
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Amanda M. T. Marler

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 February 5, 2020 from [REDACTED] Michigan. The Department was represented by Scott Matwiejczyk, 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) Program 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. The Department's OIG filed a hearing request on October 4, 2019 to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV.

2. Respondent was a recipient of MA benefits issued by the Department.
3. Respondent **was** informed of the responsibility to report changes in household circumstances to the Department.
4. Respondent **did not have** an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
5. The Department's OIG indicates that the time period it is considering the fraud period is October 2017 through April 2018 (fraud period).
6. During the fraud period, the Department alleges that \$2,103.04 of MA benefits were issued on Respondent's behalf by the Department.
7. The Department further alleges that Respondent was not entitled to the benefit of the MA payments and is, therefore, responsible for an OI totaling \$2,103.04.
8. This was Respondent's **first** alleged IPV.
9. 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), 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 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 amount for the FIP, SDA, CDC, MA and FAP programs combined is \$500.00 or more, or
 - the total amount is less than \$500.00, 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), pp. 5, 12-13; ASM 165 (August 2016).

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 his or her reporting responsibilities, and
- The client has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill reporting responsibilities.

BAM 700 (October 2018), p. 8; 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, misrepresented information, or withheld facts or committed any act constituting a violation of Supplemental Nutritional Assistance Program (SNAP) regulations or State statutes for the **purpose** of establishing, maintaining, using, presenting, transferring, receiving, possessing, trafficking, increasing or preventing reduction of program benefits or eligibility. BAM 720, pp. 1, 12-13 (emphasis in original); 7 CFR 273.16(c) and (e)(6). 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 this case, the Department asserts that Respondent committed an IPV of the MA program by failing to report her employment. Earned income received by the client is considered in the calculation of a client's MA eligibility. BEM 500 (July 2017). MA clients are required to report changes in household circumstances that potentially affect eligibility within ten days of receiving the first payment reflecting the change. BAM 105 (October 2016), p. 11. Respondent was informed of this obligation via her Application dated July 12, 2017.

On July 18, 2017, Respondent began employment with [REDACTED]. The record is unclear when Respondent received her first paycheck; however, she continued in the employment through at least April 25, 2018. The Department asserts that Respondent never reported the income to the Department, and to support its position, presented Case Comments from Respondent's case file as well as her Electronic Case File showing all documents submitted to the Department. In reviewing the Case Comments which are supposed to be entered by any Department caseworker having contact with the client, there was no contact between the Department and the client between May 31, 2017 and April 27, 2018. However, based upon the Application submitted on July 18, 2017, these case comments appear to be inaccurate. When a client submits an MA Application, the Department is required to complete an Application Interview before determining eligibility. BAM 110 (January 2017), p. 11; BAM 115 (July 2017), p. 19. Since Respondent was an active MA recipient effective July 2017 through May 2018, the Department must have completed an interview with Respondent; yet there is no case comment or record showing that there was client contact for an interview. It is notable that there was an interview completed two months prior to Petitioner's MA Application which is noted in the same set of case comments. Turning to the Electronic Case File, the case record shows that Respondent submitted her Application on July 12, 2017, that the Department ran two consolidated inquiries for household members on July 14, 2017, and that the Department received Checkstubs or Earnings Statements on July 27, 2017. The next documents received by the Department were on April 27, 2018, when Respondent returned the Wage Match Client Notice in addition to Checkstubs or Earnings Statements. The Department declined to include the checkstubs or the consolidated inquiry for Respondent from July 2017 because "they were not relevant." However, the best evidence of what information was contained in these documents is the documents themselves and not the Regulation Agent's determination of what is and is not relevant. Furthermore, Michigan Rule of Evidence 1002 requires that "to prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required..." In other words, testifying as to what a document says is not sufficient evidence of what the document says. This case hinges entirely on the question of whether Respondent informed the Department of her employment or not, and the case record shows that Respondent submitted some sort of verification of her earnings 15 days after starting her new employment, the approximate time frame it would take for her to receive her first paycheck.

After a thorough review of the evidence, the Department has not met its burden of proof by clear and convincing evidence that Respondent committed an IPV or failed to inform the Department of her employment.

Overissuance

The Department initiates MA recoupment of an OI due to client error, not when due to agency error or IPV. BAM 710 (October 2016), p. 1. Client errors occur when a client receives more benefits than they are entitled to receive because the client gave incorrect or incomplete information to the Department. BAM 700 (October 2016), p. 6. When the Department receives the amount of MA payments, it determines the OI amount. BAM 710, p. 1. For an OI due to any other reason other than unreported income or a change affecting need allowances, the OI amount is the amount of MA payments. BAM 710, p. 2.

In this case, the Department alleges that Respondent failed to report her income from employment resulting in either a client error OI or IPV. The Department has not met its burden of proof in establishing either. Therefore, the Department cannot recoup or collect the alleged OI because the Department has not shown that the OI was not the result of an agency error but instead the fault of the client.

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 **has not** established by clear and convincing evidence that Respondent committed an IPV.
2. The Department **has not** established that it is entitled to recoup or collect an MA OI as a result of a client error or IPV.

The Department is ORDERED to delete the MA OI and cease any recoupment action.

AMTM/jaf



Amanda M. T. Marler
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

Kimberly Kornoelje
NDHHS-██████ Hearings
L Bengel
Policy Recoupment

Petitioner

MDHHS-OIG-Hearings

Respondent

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