



GRETCHEN WHITMER  
GOVERNOR

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

ORLENE HAWKS  
DIRECTOR

[REDACTED]

Date Mailed: March 13, 2020  
MOAHR Docket No.: 19-013045  
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 February 27, 2020, from Detroit, Michigan. The Department was represented by Jason Rupp, 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**

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's grandchild was a recipient of MA benefits issued by the Department.

4. Respondent was made aware of the responsibility to report changes in residency and group composition.
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 January 1, 2017 through October 31, 2017.
7. The Department alleges that during the fraud period the Department paid \$1,278.31 in MA benefits on behalf of Respondent's grandchild, but Respondent's grandchild was not entitled to any MA benefits.
8. The Department alleges that Respondent received an OI in MA benefits in the amount of \$1,278.31.
9. A notice of hearing was mailed to Respondent at the last known address and was not returned by the US 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 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's granddaughter, and group member, 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, 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.

The Department alleges that there was an MA OI due to client error or IPV because Respondent failed to report her granddaughter's change in residence. The Department testified that Respondent's granddaughter relocated to the State of Missouri, making her ineligible for MA benefits due to a lack of Michigan residency. To be eligible for MA coverage through the Department, a person must be a Michigan resident. BEM 220 (January 2016), p. 1; 42 CFR 435.403(a). For MA purposes, a Michigan resident is an individual who is living in Michigan except for a temporary absence. BEM 220, p. 2. Residency continues for an individual who is temporarily absent from Michigan or intends to return to Michigan when the purpose of the absence has been accomplished. BEM 220, p. 2; 42 CFR 435.403(j).

To establish an IPV or client error, the Department presented an application for Food Assistance Program (FAP) and MA benefits submitted by Respondent on January 29, 2016. The Department asserts that when completing the application process, Respondent acknowledged that she had received the Information Booklet advising her regarding "Things You Must Do" which explained reporting changes in circumstances, including residency and group composition. Additionally, Respondent included her granddaughter as a group member.

The Department presented a Public Assistance Reporting Information System (PARIS) interstate match showing Respondent's granddaughter had a reported address in Missouri and was receiving medical assistance benefits in Missouri. The Department also presented Respondent's daughter's school records showing she was disenrolled from her school in Michigan in October 2016, due to a relocation to the State of Missouri.

The Department presented sufficient evidence to establish Respondent's granddaughter relocated and obtained residency in the State of Missouri. There was no evidence indicating Respondent's granddaughter intended to return to Michigan or that her relocation to Missouri was anything but permanent. The first indication that Respondent's daughter began residing in Missouri were the school records reflecting that the child moved in October 2016. Respondent's granddaughter continued to receive MA benefits from the State of Michigan until October 31, 2017. Respondent failed to report that her granddaughter had moved out of state and was no longer a member of her group. Respondent allowed a significant period of time to lapse without notifying the Department of her granddaughter's relocation. Therefore, the Department presented sufficient evidence to establish that Respondent received an MA OI due to client error.

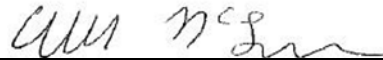
For an MA OI due to any reason other than unreported income or a change affecting the need allowances, the MA OI amount is the amount of the MA payments. BAM 710, p. 2. In this case, the Department presented an expenditure summary showing the total MA payments made by the Department on Respondent's behalf during the fraud period and a report of capitation payments showing the monthly insurance premiums the Department paid to provide Respondent's granddaughter with MA coverage during the fraud period. The sum of these expenses is \$1,278.31. Therefore, the Department is entitled to recoup and/or collect from Respondent an MA OI of \$1,278.31 during the fraud period.

### **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 Respondent did receive an MA OI due to client error.

The Department is ORDERED to initiate recoupment and/or collection procedures for the MA OI in the amount of \$1,278.31, less any amounts already recouped and/or collected, in accordance with Department policy.

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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-Saginaw-Hearings  
OIG Hearings  
Recoupment  
MOAHR

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

