



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED] MI [REDACTED]

Date Mailed: December 12, 2018
MAHS Docket No.: 18-009426
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 December 11, 2018, from Lansing, Michigan. The Department was represented by Holly Brown, Regulation Agent of the Office of Inspector General (OIG). Respondent appeared and represented herself. During the hearing, 68 pages of documents were offered and admitted as Department's Exhibit A, pp. 1-68.

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 June 14, 2016, Respondent filed with the Department an application for MA benefits. Exhibit A, pp. 10-19.
2. On Respondent's application to the Department, Respondent indicated that she did not have a job and that the only household income came from her husband's retirement. Exhibit A, pp. 10-19.

3. Respondent further indicated on the application that she did not have any disabilities. Exhibit A, p. 14.
4. 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, pp. 18-19.
5. "Things You Must Do" advised Respondent that she was required to report any changes in employment or income 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, p. 19.
6. Respondent's application was approved, and the Department thereafter began providing MA coverage. Exhibit A, pp. 24-27.
7. On August 1, 2016, Respondent began working for an employer named Renewal Property Services (Renewal). She worked there consistently from August 1, 2016 through at least February 2017. Respondent never reported the employment or income to the Department until after the Department discovered the wages through a wage match system and sent out a Wage Match Client Notice to Respondent on January 27, 2017. Exhibit A, pp. 28-32.
8. After Renewal reported Respondent's wages to the Department, the Department redetermined Respondent's eligibility for MA benefits and determined that Respondent had too much income for coverage during the months of January and February 2017. Exhibit A, pp. 28-32, 34-68.
9. The Department's OIG filed a hearing request on August 30, 2018, to establish an overissuance of benefits received by Respondent as a result of Respondent having allegedly committed an IPV by failing to timely report her income with Renewal. Exhibit A, pp. 1-5.
10. This was Respondent's first alleged IPV. Exhibit A, pp. 1-5.
11. The Department's OIG indicates that the time period it is considering the fraud period is January 1, 2017 through February 28, 2017, during which the Department dispensed \$ [REDACTED] in MA benefits. Exhibit A, pp. 1-5, 34-68.
12. 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 new income to the Department while continuing to be covered by Michigan's MA amounted to an Intentional Program Violation (IPV) with respect to MA.

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 not 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 obtained a new job within 10 days of the date she received her first paycheck. Thus, Respondent violated the requirements of the program.

However, Respondent's failure to report this change to the Department is not considered an intentional misrepresentation to maintain her MA benefits since

Respondent credibly testified at the hearing that she did not even know that she was receiving MA benefits at the time. She believed that she did not have coverage. Thus, as Respondent did not believe she was covered, it was completely reasonable for her not to report the change to the Department. Accordingly, the Department failed to meet its burden of showing by clear and convincing evidence that Respondent committed an IPV with respect to MA.

Overissuance

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 not eligible for MA benefits during the months of January and February 2017. The Department also showed that the Department issued \$ [REDACTED] in MA benefits for Respondent's benefit.

Thus, Respondent was ineligible to receive MA benefits for those months. However, because of Respondent's failure to report her income to the Department, the Department paid out \$ [REDACTED] 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 \$ [REDACTED].

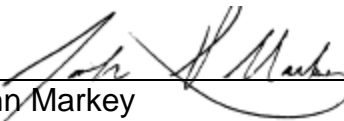
DECISION AND ORDER

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 \$ [REDACTED] that the Department is entitled to recoup and/or collect.
2. The Department has not 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 \$ [REDACTED] established in this matter less any amounts already recouped or collected.

JM/nr



John Markey
Administrative Law Judge
for Nick Lyon, 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 Administrative Hearing System (MAHS).

A party may request a rehearing or reconsideration of this Order if the request is received by MAHS 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. MAHS will not review any response to a request for rehearing/reconsideration.

A written request may be mailed or faxed to MAHS. If submitted by fax, the written request must be faxed to (517) 763-0155; Attention: MAHS Rehearing/Reconsideration Request.

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

DHHS

Kimberly Kornoelje
121 Franklin SE
Grand Rapids, MI
49507

Kent County DHHS- via electronic mail

MDHHS- Recoupment- via electronic mail

M. Shumaker- via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI
48909-7562

Respondent

[REDACTED]
[REDACTED]
[REDACTED], MI
[REDACTED]