



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR



Date Mailed: September 24, 2019
MOAHR Docket No.: 19-004413
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jacquelyn A. McClinton

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 28, 2019, from Detroit, Michigan. The Department was represented by Courtney Burnell, 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).

ISSUE

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 April 24, 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 aware of the responsibility to report changes in income to the Department within 10 days.
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 April 1, 2017 through November 30, 2017 (fraud period).
6. During the fraud period, Respondent was issued \$2,025.54 in MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0.00 in such benefits during this time period.
7. The Department alleges that Respondent received an OI in MA benefits in the amount of \$2,025.54.
8. 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.

Additionally, when a client group receives more benefits than they are entitled to receive, the Department must attempt to recoup the OI. BAM 700, p. 1. In this case, the Department is seeking recoupment of MA benefits as it alleges that Respondent received more benefits than she was entitled.

In support of its contention that Respondent received an overissuance, the Department presented an application Respondent submitted to the Department on December 14, 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 change circumstances including employment. In the December 14, 2014, application, Respondent indicated

that she was employed at Evolve Salon and Spa earning \$8.50 per hour while working 32 hours per week.

On January 9, 2017, the Department sent Respondent a Notice of Case Action which notified Respondent that she was a Simplified Reporter and was required to report any income which exceeded \$1,287.00 monthly. The Department provided paystubs from Respondent's employment which revealed the following earnings:

- January 2017 \$1,274.40
- February 2017 \$1,534.17
- March 2017 \$1,691.83
- April 2017 \$1,571.78
- May 2017 \$1,342.78
- June 2017 \$1,374.10
- July 2017 \$1,180.76
- August 2017 \$1,343.41
- September 2017 \$1,587.56
- October 2017 \$1,061.92
- November 2017 \$1,540.57

The Department testified that Respondent failed to report her increased income as required. The Department has alleged that Respondent was issued \$2,025.54 in MA benefits during the fraud period. MA is available (i) to individuals who are aged (65 or older), blind or disabled under Supplemental Security Income (SSI)-related categories, (ii) to individuals who are under age 19, parents or caretakers of children, or pregnant or recently pregnant women, and (iii) to individuals who meet the eligibility criteria for Healthy Michigan Plan (HMP) coverage. BEM 105 (January 2016), p. 1.

HMP is a MAGI-related MA category that provides MA coverage to individuals who (i) are 19 to 64 years of age; (ii) have income at or below 133% of the federal poverty level (FPL) under the Modified Adjusted Gross Income (MAGI) methodology; (iii) do not qualify for or are not enrolled in Medicare; (iv) do not qualify for or are not enrolled in other MA programs; (v) are not pregnant at the time of application; and (vi) are residents of the State of Michigan. BEM 137 (January 2016), p. 1.

Respondent, who is under age 64, not enrolled in Medicare and not the caretaker of any minor children, is potentially eligible for MA under the HMP. An individual is eligible for HMP if her household's income does not exceed 133% of the FPL applicable to the individual's group size. A determination of group size under the MAGI methodology requires consideration of the client's tax status and dependents. In this case, the evidence showed that Respondent's household size for MAGI purposes is one.

The Department calculated the income limit as 133% of the annual FPL. Because it calculated the income limit as 133% of the annual FPL, it determined that Respondent's monthly income could not exceed \$1,336.65. However, the Department should have

calculated the income limit as 138% of the annual FOL. For MAGI-related MA programs, the Department allows a five percent disregard in the amount equal to five percent of the FPL level for the applicable family size. BEM 500 (July 2017), p. 5. It is not a flat five percent disregard from the income. BEM 500, p. 5. The five percent disregard is applied to the highest income threshold. BEM 500, p. 5. The five percent disregard shall be applied only if required to make someone eligible for MA benefits. BEM 500, p. 5. The policy does not restrict the five percent disregard to only be required to make someone eligible at application. As such, it is presumed that the five percent disregard is allowed on an ongoing basis if required to maintain eligibility. In 2017, 138% of the FPL for a household with one member was \$16,643.00. <https://aspe.hhs.gov/poverty-guidelines>. Therefore, to be income eligible for HMP, Respondent's monthly income could not exceed \$1,386.91.

The Department testified that it only included the months in which Respondent exceeded \$1,336.65 in its requested overissuance amount. However, based on the foregoing policy, the Department is only entitled to seek an overissuance for the months during the fraud period in which Respondent's income exceeded \$1,386.91, which included: April 2017, September 2017 and November 2017. The capitations for the April 2017 (\$263.01), September 2017 (\$263.01) and November 2017 (\$225.21) total \$751.23.

The Department also appears to seek reimbursement based upon payments identified on page 65 of Exhibit A. However, there are no dates associated with the payments. Thus, there is no way to determine whether the payments were issued during April 2017, September 2017 and/or November 2017. As such, the Department has not provided sufficient information to support their assertion to an overissuance based upon these payments. Accordingly, the Department has established that an overissuance occurred in the amount of \$751.23; and it is, therefore, entitled to recoup that amount for MA benefits it issued to Respondent during the fraud period.

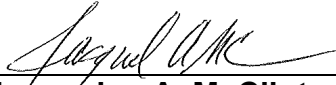
DECISION AND ORDER

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 OI of program FAP benefits in the amount of \$751.23.

The Department is ORDERED to initiate recoupment procedures for the amount of \$751.23 in accordance with Department policy.

JAM/



Jacquelyn A. McClinton
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 (via electronic mail)

MDHHS-Genesee-Clio-Hearings

Petitioner (via electronic mail)

MDHHS-OIG-Hearings

L Bengel
Policy Recoupment

Respondent (via first class mail)

