



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]

Date Mailed: January 8, 2020  
MOAHR Docket No.: 19-006888  
Agency No.: [REDACTED]  
Petitioner: OIG  
Respondent: [REDACTED]

**ADMINISTRATIVE LAW JUDGE: Christian Gardocki**

**HEARING DECISION TO ESTABLISH AN OVERISSUANCE CLAIM**

Upon the request for a hearing by the Michigan Department of Health and Human Services (MDHHS), 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 9, 2019, from Detroit, Michigan. The Michigan Department of Health and Human Services (MDHHS) was represented by Maria Williams, regulation agent with the Office of Inspector General. Respondent appeared and was represented. [REDACTED] participated as Respondent's legal counsel.

**ISSUE**

The issue is whether MDHHS established a claim for overissued Medical Assistance (MA) benefits.

**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 March 10, 2017, Respondent completed a Federally Facilitated Marketplace Application. Respondent was the only reported household member. Respondent answered "yes" to a statement, "Applicant agrees to inform FFM of changes to application".
2. On April 24, 2017, MDHHS mailed Respondent a notice approving Medicaid beginning March 2017. Boilerplate notice language stated that clients are to report income changes to MDHHS within 10 days.

3. Beginning April 27, 2017, Respondent began receiving employment income from [REDACTED] (hereinafter, "Employer"). Respondent's gross monthly wages from June 2017 through April 2018 exceeded \$7,500.
4. From June 2017 through April 2018, Respondent received Medicaid which cost the State of Michigan a total of \$4,690.61. The benefits issued to Respondent from June 2017 through September 2017 cost \$1,635.42.
5. From June 2017 through April 2018, Respondent was between 19-64 years, not pregnant, not disabled, and not a caretaker to minor children.
6. On April 4, 2018, MDHHS mailed to Respondent a notice approving her for Medicaid subject to a \$6,447 monthly deductible beginning May 2018. Exhibit A, pp. 24-27.
7. Through April 2018, Respondent did not report income from Employer to MDHHS.
8. On [REDACTED] 2019, MDHHS requested a hearing to establish a debt related to \$4,690.61 of MA benefits issued to Respondent from June 2017 through April 2018. Exhibit A, p. 1.

### **CONCLUSIONS OF LAW**

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. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

MDHHS requested a hearing to establish a debt of \$4,690.61 for MA benefits allegedly over-issued to Respondent from June 2017 through April 2018. MDHHS' Hearing Summary and testimony alleged the overissuance (OI) was caused by unbudgeted and unreported employment income.

MDHHS may request a hearing to establish a debt. BAM 600 (October 2017) p. 5. For all programs, when a client group receives more benefits than it is entitled to receive, MDHHS must attempt to recoup the overissuance. BAM 700 (January 2016), pp. 1-2. An overissuance is the amount of benefits issued to the client group in excess of what it was eligible to receive. *Id.* Recoupment is an MDHHS action to identify and recover a benefit overissuance. *Id.*

MDHHS alleged that Respondent received an OI of MA benefits. To establish an overissuance of MA benefits, consideration of the types of Medicaid categories is necessary.

The Medicaid program includes several sub-programs or categories. BEM 105 (April 2017), p. 1. To receive MA under a Supplemental Security Income (SSI)-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formerly blind or disabled. *Id.* Medicaid eligibility for children under 19, parents or caretakers of children, pregnant or recently pregnant women, former foster children, MOMS, MICHild and Healthy Michigan Plan (HMP) is based on Modified Adjusted Gross Income (MAGI) methodology. *Id.*

Persons may qualify under more than one MA category. *Id.*, p. 2. Federal law gives them the right to the most beneficial category. *Id.* The most beneficial category is the one that results in eligibility, the least amount of excess income or the lowest cost share. *Id.*

Respondent, during the alleged OI period, was neither pregnant, a caretaker to minor children, nor disabled. Respondent was between 19 and 64 years old. Respondent's circumstances would only allow for Medicaid under the category of HMP.

HMP is a health care program administered by the Michigan Department of Community Health, Medical Services Administration. The program is authorized under the Affordable Care Act of 2010 as codified under 1902(a)(10)(A)(i)(VIII) of the Social Security Act and in compliance with the Michigan Public Act 107 of 2013. In addition to Bam and BEM, HMP policies are found in the Medicaid Provider Manual.

HMP is based on MAGI methodology. BEM 137 (October 2016), p. 1. MAGI is a methodology for how income is counted and how household composition and family size are determined. MAGIM (May 28, 2014), p. 14. It is based on federal tax rules for determining adjusted gross income. *Id.* It eliminates asset tests and special deductions or disregards. *Id.* Every individual is evaluated for eligibility based on MAGI rules. *Id.*

MAGI-based income means income calculated using the same financial methodologies used to determine modified adjusted gross income as defined in section 36B(d)(2)(B) of the Code.<sup>1</sup> 42 CFR 435.603 (e). Financial eligibility for Medicaid for applicants, and other individuals not receiving Medicaid benefits at the point at which eligibility for Medicaid is being determined, must be based on current monthly household income and family size. 42 CFR 435.603 (h)(1). In determining current monthly or projected annual household income and family size under paragraphs (h)(1) or (h)(2), the agency may adopt a reasonable method to include a prorated portion of reasonably predictable future income, to account for a reasonably predictable increase or decrease in future income, or both, as evidenced by a signed contract for employment, a clear history of predictable fluctuations in income, or other clear indicia of such future changes in income. 42 CFR 435.603 (h)(3).

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<sup>1</sup> Income exceptions are made for lump-sums which are counted as income only in the month received; scholarships, awards, or fellowship grants used for education purposes and not for living expenses; and various exceptions for American Indians and Alaska natives. None of these exceptions are applicable to the present case.

Respondent reported on her application that she was unmarried and with no minor children in her household. The evidence supports finding that Respondent is the only benefit group member (i.e. she is a group size of one).

MDHHS presented theworknumber.com documentation of Respondent's employment with Employer which listed Respondent's pay history starting April 27, 2017. Exhibit A, pp. 31-35. MDHHS also presented a worksheet listing Respondent's monthly income totals. The documentation verified that Respondent received at least \$7,500 in all months during the alleged OI period. For purposes of determining Respondent's income eligibility under HMP, Respondent's gross monthly income will be accepted to be \$7,500.

Common deductions and disregards which should be factored in determining a person's adjusted gross income include alimony payments, unreimbursed business expenses, Health Savings Account (e.g., 401k) payments, and student loan interest.<sup>2</sup> There was no evidence of applicable deductions.

HMP income limits are based on 133% of the federal poverty level. RFT 246 (April 2014), p. 1. For persons residing in the contiguous 48 states, the 2017 federal poverty level is \$12,060 for a 1-person group.<sup>3</sup> For Respondent to be eligible for HMP in 2017, her group's countable income would have to fall at or below \$16,039.80 (\$1,336.65 per month). The 2018 federal poverty level is \$12,140 for a 1-person group.<sup>4</sup> For Respondent to be eligible for HMP in 2018, her countable income would have to fall at or below \$16,146.20 (\$1,345.51 per month). Respondent's monthly income of at least \$7,500 exceeded the monthly HMP income limit in 2017 and 2018. Thus, Respondent was ineligible to receive HMP due to excess income.

MDHHS delayed beginning an overissuance period until June 2017 despite Respondent receiving employment income beginning April 2017. The delay is compliant with policy which requires MDHHS to begin a MA-OI period in the first full benefit month after the standard reporting period (10 days) plus the negative action period (12 days). BAM 710 (October 2016), p. 1.

For MA benefits, benefits may be recouped if the OI was caused by the client. BAM 710 (January 2018), p. 1. MDHHS may not establish a recoupment for an agency-caused error. *Id.* Thus, to establish a debt against Respondent, MDHHS must establish that Respondent was at fault for the OI of Medicaid.

MDHHS' Hearing Summary alleged an intentional program violation (IPV) by Respondent. An IPV is an allegation of fraud (see BAM 720).

Respondent presented documents of her medical insurance history. Exhibit 1, pp. 1-80. The documents verified that Respondent paid for medical insurance through her

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<sup>2</sup> <https://www.investopedia.com/terms/a/agi.asp>

<sup>3</sup> <https://aspe.hhs.gov/2017-poverty-guidelines>

<sup>4</sup> <https://aspe.hhs.gov/2018-poverty-guidelines>

employer throughout the entire alleged OI period. Respondent would have little need to defraud MDHHS for Medicaid while paying for her own medical coverage. The evidence did not establish any fraud by Respondent. Though Respondent did not commit fraud, an overissuance can be established for non-fraudulent behavior by Respondent.

MDHHS alleged that Respondent failed to report to MDHHS her employment income beginning April 27, 2017. Respondent's testimony acknowledged that she did not report receiving income to MDHHS. Respondent testified that she thought MDHHS was aware of her employment because she reported her employment to the Michigan Unemployment Agency (MUA). Respondent testified that she thought her reporting to MUA would suffice because she recalled applying for unemployment benefits at the same time that she applied for medical coverage. A reporting to MUA does not equate to a reporting to MDHHS. Respondent's sincere but mistaken belief does not alleviate her responsibility to report changes to MDHHS.

Clients must report to MDHHS changes in circumstance that potentially affect eligibility or benefit amount. BAM 105 (April 2016), p. 11. Income changes must be reported within 10 days after the income begins. *Id.*, p. 12. Respondent should have been aware of the need to report changes based on her agreement to report any changes to her application for medical coverage which reported no income. Exhibit A, pp. 10-20. Additionally, Respondent should have been aware of her responsibility to report changes in income from boilerplate language on her Medicaid approval notice. Exhibit A, pp. 21-23.

Generally, the amount of MA overissuance is the amount of MA benefits incorrectly issued. *Id.*, p. 2. For an OI due to unreported income, the OI amount is the correct deductible (minus any amount already met) or the amount of MA payments, whichever is less. *Id.* Respondent was not eligible for any Medicaid categories for which a deductible may have been issued. Thus, the OI amount is the cost of benefits issued to Respondent.

MDHHS presented documentation of Respondent's MA costs during the OI period. Exhibit A, p. 39 The cost of Respondent's Medicaid coverage from June 2017 through April 2018 totaled \$4,690.61.

The evidence established that Respondent received an OI of medical benefits from June 2017 through April 2018 which cost the State of Michigan \$4,690.61. The evidence also established that Respondent failed to report employment income which contributed to the OI. The recoverable amount of the OI should factor that MDHHS also had a responsibility under its policy to limit the OI.

MDHHS routinely matches recipient employment data with the Michigan Talent Investment Agency (TIA) and the Unemployment Insurance Agency (UIA) through computer data exchange processes. BAM 802 (April 2017) p. 1. Information provided with MDHHS/MDE applications inform clients of the data exchange process. *Id.* These data exchanges assist in the identification of potential current and past employment

income. *Id.* MDHHS submits client Social Security Numbers to TIA quarterly to be cross-matched with the work history records submitted by Michigan employers. *Id.* This information is compared to the client's gross earnings record in the MDHHS database. *Id.*

Respondent was approved for Medicaid on April 24, 2017, based on \$0 employment income. Respondent began receiving employment income three days later. MDHHS was, or should have been, checking at least every 3 months (i.e. "quarterly") for evidence of Respondent's employment income. Presumably, Respondent's Michigan-based employer was reporting Respondent's income so that MDHHS had access to the information. Thus, MDHHS shares responsibility in the cause of the OI by not discovering Respondent's income through its wage matching processes.

MDHHS cannot be faulted for three months of the OI as wage matches are only ran quarterly. An additional 45 days should also be factored to allow MDHHS time to process a wage match *Id.*, p. 3. Thus, three months + 45 days from the start of Respondent's employment can be attributed to client-error. Adding four and a half months to the employment start date results in an OI period through September 2017. Respondent's Medicaid costs from June 2017 through September 2017 totaled \$1,635.42. Thus, MDHHS established a claim against Respondent for \$1,635.42; MDHHS will be denied a claim for the balance of its requested claim of \$4,690.61.

**DECISION AND ORDER**

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS failed to establish that Respondent received an OI of \$3,585.81 in MA benefits from September 2017 through April 2018. The MDHHS request to establish \$3,055.19 of an OI claim of \$4,690.61 against Respondent is **DENIED**.

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS established that Respondent received an OI of \$1,635.42 in MA benefits from June 2017 through September 2017. The MDHHS request to establish \$1,635.42 of an OI claim of \$4,690.61 against Respondent is **APPROVED**.

CG/cg



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**Christian Gardocki**

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-Oakland-3-Hearings  
OIG Hearings  
Recoupment  
MOAHR

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

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

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