



STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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

Date Mailed: January 10, 2020
MOAHR Docket No.: 19-009508
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Landis Lain

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 January 9, 2020, from Lansing, Michigan. The Department was represented by Brian Siegfried, Regulation Agent of the Office of Inspector General (OIG). Respondent, [REDACTED], appeared and testified on her own behalf. Melissa Schichtel, Assistance Payment's Worker appeared but did not testify at the hearing.

Department's Exhibit A pages 1-44 were admitted as evidence.

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)?
3. Should Respondent be disqualified from receiving benefits for MA?

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 benefits received by Respondent as a result of Respondent having allegedly committed an IPV.

2. The OIG has requested that Respondent be disqualified from receiving program benefits.
3. On [REDACTED], 2018, Respondent filed an application for MA benefits.
4. Respondent was a recipient of MA benefits issued by the Department.
5. Respondent acknowledged that Respondent was aware of the responsibility to report employment and income on her signed application.
6. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
7. The Department's OIG indicates that the time period it is considering the fraud period is January 2018-July 2018 (fraud period).
8. During the fraud period, Respondent was issued \$2053.00 in FAP benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
9. The Department alleges that Respondent received an OI in FAP benefits in the amount of \$2053.00.
10. This was Respondent's first alleged IPV.

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, 2017, the Department's OIG requests IPV hearings for the following cases:

IPV exists when the beneficiary or authorized representative:

- Is found guilty by a court, or

- Signs a DHS-4350, IPV Repayment Agreement, and the prosecutor or the Office of Inspector General (OIG), authorizes recoupment in lieu of prosecution, or
- Is found responsible for the IPV by an Administrative Law Judge conducting an IPV or debt establishment hearing. BAM 720, page 2

Intentional Program Violation

Suspected IPV means an OI exists for which all three of the following conditions exist:

- The Respondent intentionally failed to report information or intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, and
- The Respondent was clearly and correctly instructed regarding his or her reporting responsibilities, and
- The Respondent has no apparent physical or mental impairment that limits his or her understanding or ability to fulfill reporting responsibilities. BAM 700, p 7 (1/1/2016; BAM 720, p 1 (1/1/2016).

An IPV requires that the Department establish by clear and convincing evidence that the Respondent has intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing or preventing reduction of program benefits or eligibility. BAM 720; see also 7 CFR 273. 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.

This was Respondent's first instance of an IPV. Therefore, a 12-month disqualification is required.

Overissuance

When a Respondent group receives more benefits than entitled to receive, the Department must attempt to recoup the overissuance. BAM 700, p 1 (1/1/2016).

Clear and convincing proof means that the **evidence** presented by a party during the trial must be highly and substantially more probable to be true than not and the trier of fact must have a firm belief or conviction in its factuality.

This Administrative Law Judge finds that Respondent failed to report employment or income on her application. Page 12 of the Department's Exhibit shows that Petitioner marked 'No' at the question of current or recent job.

On July 16, 2019, the client's case file was reviewed. The client completed an Assistance Application for medical benefits on [REDACTED], 2018 acknowledging

her rights and responsibilities to DHHS. The client reported on this application she did not have any earned or unearned income. The client was mailed a Health Care Coverage Determination Notice on January 17, 2018 which explained the client's reporting requirements.

On July 29, 2019, verification of the client's employment, and wages from Shanty Creek Resort, was received by the Department. This verification shows the client received a paycheck on January 10, 2018 and every two weeks through the time period in question.

The Respondent was not entitled to receive any MA benefits, during this time period (January 1, 2018-July 31, 2018). If Respondent had properly reported income from employment, she would have had excess income and would not have been eligible for MA during the relevant time period. The Respondent was over issued \$2053.00 in MA benefits.

The Department has established by the necessary competent, substantial and material evidence on the record that it was acting in compliance with Department policy when it determined that Respondent failed to notify the Department of earned income and when it determined that Respondent committed and Intentional Program Violation.

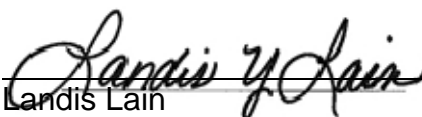
DECISION AND ORDER

The Administrative Law Judge based upon the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, concludes that:

1. The Department has established by clear and convincing evidence that Respondent committed an IPV.
2. Respondent did receive an OI of MA benefits in the amount of \$2053.00.

The Department is ORDERED to initiate recoupment procedures for the amount of \$2053 in accordance with Department policy.

LL/nr



Landis Lain
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

Petitioner

OIG- via electronic mail
PO Box 30062
Lansing, MI
48909-7562

Kalkaska County DHHS- via electronic mail

MDHHS- Recoupment- via electronic mail

L. Bengel- via electronic mail

DHHS

Tricia Pleva
503 North Birch Street
Kalkaska, MI
49646

Respondent

[REDACTED] via first class mail
[REDACTED]
[REDACTED] a, MI
[REDACTED]