



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
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[REDACTED]

Date Mailed: December 27, 2019
MOAHR Docket No.: 19-010029
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 scheduled for December 9, 2019, from Detroit, Michigan. The hearing was held on the scheduled hearing date and at least 30 minutes after the scheduled hearing time. MDHHS was represented by Maria Williams, regulation agent with the Office of Inspector General. Respondent did not participate in the hearing.

ISSUE

The issue is whether MDHHS established a recipient 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 December 14, 2015, Respondent submitted to MDHHS an application requesting medical benefits. Respondent reported being 54 years old, not pregnant, not disabled, and not a caretaker to children. Respondent's reported household included Respondent's spouse. Boilerplate language stated that clients are to report income changes to MDHHS within 10 days.
2. On October 4, 2016, MDHHS mailed Petitioner notice of an approval for medical benefits beginning November 2016. A household income of \$0 was factored in

the determination. Boilerplate language stated that clients are to report income changes to MDHHS within 10 days.

3. From February 1, 2017, through February 1, 2018, Respondent received employment income from [REDACTED] (hereinafter, "Employer"). Respondent's total gross monthly income ranged from \$4,000 to \$12,500.01 during all months of employment.
4. From April 2017 through April 2018, MDHHS issued medical benefits to Respondent. The medical benefits cost \$551.37. Exhibit A, p. 35.
5. On September 22, 2017, MDHHS mailed Petitioner notice of an approval for continuing medical benefits beginning November 2017. A household income of \$0 was factored in the determination. Boilerplate language stated that clients are to report income changes to MDHHS within 10 days. Exhibit A, pp. 23-25.
6. On April 4, 2018, MDHHS mailed Petitioner notice of a closure for medical benefits beginning May 2018. Exhibit A, pp. 26-29.
7. On [REDACTED] 2019, MDHHS requested a hearing to establish a debt against Respondent related to \$551.37 in MA benefits overissued from April 2017 through April 2018.

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 \$551.37 for allegedly over-issued MA benefits to Respondent from April 2017 through April 2018. Exhibit A, p. 1. MDHHS' Hearing Summary and testimony alleged the 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 Medicaid. To establish an overissuance of Medicaid, 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 applied for Medicaid on December 14, 2015. Exhibit A, pp. 9-19. Respondent reported being 19-64 years old, not pregnant, and not disabled. MDHHS testimony alleged the same circumstances applied to Respondent throughout the OI period. As no evidence suggested otherwise, Respondent's circumstances at the time of application will be found to apply throughout the alleged overissuance period.

Under Respondent's circumstances, her only potential category for Medicaid is under HMP. MDHHS determined that Respondent had excess income for HMP eligibility.

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. HMP policies are found in the Medicaid Provider Manual and Modified Adjusted Gross Income Related Eligibility Manual (MAGIM).

HMP is based on Modified Adjusted Gross Income (MAGI) methodology. BEM 137 (October 2016), p. 1. Modified adjusted gross income (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.¹ 42 CFR 435.603 (e). Financial eligibility for Medicaid for applicants, and

¹ 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

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).

Respondent reported on her application that she was married and with no minor children in her household. The evidence suggested a group size of two persons.²

MDHHS presented theworknumber.com documentation of Respondent's employment with Employer. Exhibit A, pp. 31-32. The documentation listed employment for Respondent from February 1, 2017, through February 1, 2018. For each month from the OI period, Respondent's gross income was at least \$4,000. For purposes of determining Respondent's income eligibility under HMP, Respondent's gross monthly income will be accepted to be \$4,000.

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.³ 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 \$16,240 for a 2-person group.⁴ For Respondent to be eligible for HMP in 2017, countable income would have to fall at or below \$21,599.20 (\$1,799.93 per month). The 2018 federal poverty level is \$16,460 for a 2-person group.⁵ For Respondent to be eligible for HMP in 2018, countable income would have to fall at or below \$21,891.80 (\$1,824.31 per month). Respondent's monthly income of at least \$4,000 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 April 2017 despite Respondent receiving employment income beginning February 1, 2017. The delay is compliant with policy which requires MDHHS to begin a MA-OI period in the first full benefit month after

various exceptions for American Indians and Alaska native. No known exceptions are applicable to the present case.

² For MAGI-related groups, the group includes tax dependents. BEM 211 (January 2016) pp. 1-2. A tax dependent does not always live in the household of a tax filer. For example, children may be away at college yet still be claimed as a tax dependent by parents. The evidence did not suggest this circumstance.

³ <https://www.investopedia.com/terms/a/agi.asp>

⁴ <https://aspe.hhs.gov/2017-poverty-guidelines>

⁵ <https://aspe.hhs.gov/2018-poverty-guidelines>

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 alleged that Respondent failed to report to MDHHS employment with Employer. MDHHS' allegation is consistent with testimony that Respondent failed to report receiving income from Employment before the end of the OI period; no evidence suggested otherwise. Also, MDHHS' allegation is consistent with Respondent receiving Medicaid benefits for over a year despite having excess income.

Respondent should have been aware of the obligation to report changes. Respondent agreed on her application dated December 14, 2015, to report changes to the application. Exhibit A, pp. 9-19. Additionally, an approval notice of Medicaid sent to Respondent on October 4, 2016, included boilerplate language that clients are to report changes in income to MDHHS within 10 days. Exhibit A, pp. 20-22. The evidence established that Respondent was at fault for receiving overissued Medicaid.

Generally, the amount of MA overissuance is the amount of MA payments 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 total of MA payments issued to Respondent.


MDHHS presented documentation of Respondent's MA costs during the OI period. Exhibit A, pp. 35-37. Total MA payments during the OI period were \$551.37.

The evidence established that Respondent received an OI of medical benefits from April 2017 through April 2018 which cost the State of Michigan \$551.37. The evidence also established that Respondent was at fault for the OI. Thus, MDHHS established a claim of \$551.37 against Respondent.

DECISION AND ORDER

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 \$551.37 in Medicaid from April 2017 through April 2018. The MDHHS request to establish an OI claim against Respondent is **APPROVED**.

CG/cg



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

Respondent

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