



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
IN [REDACTED]

Date Mailed: February 10, 2020
MOAHR Docket No.: 19-010092
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Kevin Scully

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, and with Mich Admin Code, R 400.3130 and R 400.3178. After due notice, a telephone hearing was held on January 28, 2020, from Lansing, Michigan. The Department was represented by Taylor Jenkins, Regulation Agent of the Office of Inspector General (OIG). Respondent was represented by her attorney Katie Johnson, and Respondent testified on her own behalf.

ISSUES

1. Did Respondent receive an overissuance (OI) of Medical Assistance (MA) benefits that the Department is entitled to recoup?
2. Did the Department establish by clear and convincing evidence that the 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 an application for assistance dated [REDACTED], Respondent acknowledged her duties and responsibilities including the duty to report changes of residency and the receipt of benefits from another state. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 9-34.

2. Respondent acknowledged under penalties of perjury that her [REDACTED], [REDACTED] application form was examined by or read to her, and, to the best of her knowledge, contained facts that were true and complete. Exhibit A, pp 16-17.
3. On January 23, 2017, October 24, 2017, June 4, 2018, and October 25, 2018, the Department notified Respondent at her mailing address of record that she remained eligible for ongoing Medical Assistance (MA) benefits. Exhibit A, pp 35-46.
4. Respondent failed to report that she had started employment in Indiana on February 19, 2019, and received earned income from March 8, 2019, through June 28, 2019. Respondent had reported an Indiana residence for her home address to her employer. Exhibit A, p 47, and pp 50-51.
5. Respondent received Medical Assistance (MA) with a value of \$2,851.77 from September 1, 2018, through July 31, 2019. Exhibit A, p 54.
6. Respondent received Medicaid benefits from the state of Indiana from September 1, 2018, through August 31, 2019. Exhibit A, p 48.
7. The Department's OIG filed a hearing request on September 10, 2019, to establish an OI of benefits received by Respondent as a result of Respondent having allegedly committed an IPV. Exhibit A, p 2.
8. On September 10, 2019, the Department sent the Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$2,851.77 overpayment. Exhibit A, pp 5-6.
9. 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), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

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 OIG requests IPV hearings for the following cases:

- FAP trafficking OIs that are not forwarded to the prosecutor.
- Prosecution of welfare fraud or FAP trafficking is declined by the prosecutor for a reason other than lack of evidence, and
 - the total OI amount for the FIP, SDA, CDC, MA and FAP programs is \$500 or more, or
 - the total OI amount is less than \$500, and
 - the group has a previous IPV, or
 - the alleged IPV involves FAP trafficking, or
 - the alleged fraud involves concurrent receipt of assistance (see BEM 222), or
 - the alleged fraud is committed by a state/government employee.

Department of Health and Human Services Bridges
Administrative Manual (BAM) 720 (October 1, 2017), pp 12-13.

Overissuance

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. Department of Human Services Bridges Administrative Manual (BAM) 700 (October 1, 2018), p 1.

Concurrent receipt of benefits means assistance received from multiple programs to cover a person's needs for the same time period. Benefit duplication means assistance received from the same (or same type of) program to cover a person's needs for the same month. Benefit duplication is prohibited except for MA and FAP in limited circumstances. Department of Health and Human Services Bridges Eligibility Manual (BEM) 222 (October 1, 2018), p 3.

To be eligible for MA benefits, a person must be a Michigan resident. A Michigan resident is an individual who is living in Michigan except for a temporary absence. Residency continues for an individual who is temporarily absent from Michigan or intends to return to Michigan when the purpose of the absence has been accomplished. Department of Health and Human Services Bridges Eligibility Manual (BEM) 220 (January 1, 2020), pp 1-2.

On an application for assistance dated [REDACTED], Respondent acknowledged the duties and responsibilities of receiving MA benefits including her duty to report a change of residency as well as the receipt of concurrent medical assistance from another state. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.

The evidence supports a finding that Respondent left Michigan on or around February 19, 2019, and failed to report starting employment in Indiana. It is not clear from the hearing record whether Respondent was in Indiana temporarily, or whether she intended to return to Michigan. It was not disputed during the hearing that the earned income Respondent received from this employment in Indiana was not more than 133% of the federal poverty level, and that Respondent continued to meet the financial requirements for receiving Michigan MA benefits under the Healthy Michigan Plan (HMP).

However, on or around September 1, 2018, Respondent applied for and became eligible for Medicaid benefits issued by the state of Indiana. Respondent failed to report that she had applied for Medicaid in Indiana, and Respondent was not eligible for Michigan MA benefits while concurrently receiving Medicaid in Indiana.

Respondent received Michigan MA benefits with a value of \$2,851.77 from September 1, 2018, through July 31, 2019, which represents the capitation payments made on her behalf to maintain active MA coverage in Michigan. Therefore, Respondent received a \$2,851.77 overissuance of Michigan MA benefits.

Intentional Program Violation

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

- The client intentionally failed to report information **or** intentionally gave incomplete or inaccurate information needed to make a correct benefit determination, and
- The client was clearly and correctly instructed regarding the reporting responsibilities, and
- The client has no apparent physical or mental impairment that limits the understanding or ability to fulfill reporting responsibilities.

BAM 700, p 7, BAM 720, 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 (emphasis in original); see also 7 CFR 273.16(e)(6).

The Department has the burden of establishing by clear and convincing evidence that the Respondent committed an Intentional Program Violation (IPV). The clear and convincing evidence standard, which is the most demanding standard applied in civil cases, is established where there is evidence so clear, direct and weighty and convincing that a conclusion can be drawn without hesitancy of the truth of the precise facts in issue. *Smith v Anonymous Joint Enterprise*, 487 Mich 102; 793 NW2d 533 (2010), reh den 488 Mich 860; 793 NW2d 559 (2010).

Clear and convincing proof is that which produces in the mind of the trier of fact a firm belief or conviction as to the truth of the precise facts in issue. Evidence may be uncontroverted and yet not be clear and convincing. Conversely, evidence may be clear and convincing even if contradicted. *Id.*

On an application for assistance dated [REDACTED], Respondent acknowledged the duties and responsibilities of receiving MA benefits including her duty to report a change of residency as well as the receipt of concurrent medical assistance from another state. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.

Despite Respondent's acknowledgement of the duties and responsibilities of receiving Michigan MA benefits, Respondent failed to report starting employment, receiving earned income, leaving Michigan for an extended period, and applying for Medicaid in Indiana. Although Respondent claims to have mistakenly failed to report the changes to her circumstances, the hearing record supports a finding that Respondent intentionally failed to report her circumstances to the Department. As a result of Respondent's failure to report her circumstances to the Department, she received MA benefits that she was not eligible for.

This Administrative Law Judge finds that the Department has presented clear and convincing evidence that the Respondent intentionally failed to report that she was receiving Medicaid benefits in Indiana for the purposes of maintaining her eligibility for Michigan MA benefits that she would not have been eligible for otherwise.

Disqualification

A court or hearing decision that finds a client committed IPV disqualifies that client from receiving program benefits. BAM 720, p. 15-16. A disqualified recipient remains a member of an active group as long as the disqualified person lives with them, and other eligible group members may continue to receive benefits. BAM 720, p. 16.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the OI relates to MA. BAM 720, p. 13. Refusal to repay will not cause denial of current or future MA if the client is otherwise eligible. BAM 710 (January 1, 2018), p. 2.

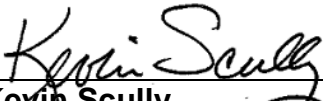
The Department has established an Intentional Program Violation (IPV).

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 Medical Assistance (MA) benefits in the amount of \$2,851.77.
3. The Department is ORDERED to initiate recoupment procedures for the amount of \$2,851.77 in accordance with Department policy.

KS/hb



Kevin Scully
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

Ottawa County via electronic mail

Policy-Recoupment via electronic mail

L. Bengel via electronic mail

Petitioner

OIG via electronic mail

Respondent

[REDACTED], IN [REDACTED]

Counsel for Respondent

Katie M Johnson
25 Divison Ave S
Ste 300
Grand Rapids, MI 49503