



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], MI [REDACTED]

Date Mailed: December 28, 2020
MOAHR Docket No.: 20-005028
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Landis Lain

HEARING DECISION

The Michigan Department of Health and Human Services (MDHHS or the Department) requested a hearing alleging that Respondent [REDACTED] admitted an intentional program violation (IPV). Pursuant to MDHHS' request and in accordance with MCL 400.9, 7 CFR 273.16, 42 CFR 431.230(b), and 45 CFR 235.110, and Mich Admin Code, R 400.3130 and R 400.3178, this matter is before the undersigned Administrative Law Judge. After due notice, a hearing was held via telephone conference on December 17, 2020.

Dana Mikko, Regulation Agent of the Office of Inspector General (OIG), represented MDHHS.

Respondent did not appear at the hearing, and it was held in Respondent's absence pursuant to 7 CFR 273.16(e)(4); Mich Admin Code, R 400.3130(5); or Mich Admin Code, R 400.3178(5).

ISSUES

1. Did MDHHS establish, by clear and convincing evidence, that Respondent committed an IPV concerning Medical Assistance (MA) benefits?
2. Did Respondent receive an overissuance (OI) of MA benefits that MDHHS is entitled to recoup and/or collect as a recipient claim?

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 July 1, 2020, 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. Respondent was a recipient of MA benefits issued by the Department.
4. Respondent **was** aware of the responsibility to report employment and income.
5. Respondent **did not have** an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement.
6. The Department's OIG indicates that the time period it is considering the fraud period is August 1, 2017-April 30, 2019 (fraud period).
7. During the fraud period, Respondent was issued \$8,269.57 in MA benefits by the State of Michigan, and the Department alleges that Respondent was entitled to \$0 in such benefits during this time period.
8. The Department alleges that Respondent received an OI in MA benefits in the amount of \$8,269.57.
9. This was Respondent's **first** alleged IPV.
10. A notice of hearing was mailed to Respondent at the last known address and **was not** returned by the United States Postal Services as undeliverable.

CONCLUSIONS OF LAW

MDHHS policies are contained in the MDHHS 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 to 42 USC 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 to 42 CFR 430.25. MDHHS administers the MA program pursuant to 42 CFR 435, MCL 400.10 and MCL 400.103 to MCL 400.112k of the Social Welfare Act, MCL 400.1 *et seq.*

Intentional Program Violation

An IPV occurs when a recipient of MDHHS benefits intentionally made a false or misleading statement, or misrepresented, concealed, or withheld facts. 7 CFR

273.16(c)(1). Effective October 1, 2014, MDHHS's OIG requests IPV hearings for cases where (1) the total repayment amount sought from Respondent for all programs combined is \$500 or more or (2) the total repayment amount sought from Respondent for all programs combined is less than \$500 but the group has a previous IPV, the matter involves concurrent receipt of assistance, the IPV involves FAP trafficking, or the alleged fraud is committed by a state government employee. BAM 720.

To establish an IPV, MDHHS must present clear and convincing evidence that the household member committed, and intended to commit, the IPV. 7 CFR 273.16(e)(6); BAM 720, p. 1. Clear and convincing evidence is evidence sufficient to result in "a firm belief or conviction as to the truth of the precise facts in issue." *Smith v Anonymous Joint Enterprise*, 487 Mich 102, 114-115; 793 NW2d 533 (2010); see also M Civ JI 8.01. Evidence may be uncontroverted and yet not be clear and convincing; conversely, evidence may be clear and convincing despite the fact that it has been contradicted. *Smith* at 115. The clear and convincing standard is "the most demanding standard applied in civil cases." *In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995). For an IPV based on inaccurate reporting, MDHHS policy also requires that the individual have been clearly and correctly instructed regarding the reporting responsibilities and have no apparent physical or mental impairment that limits the ability to understanding or fulfill these reporting responsibilities. BAM 720.

The Administrative Law Judge finds:

Respondent, [REDACTED] [REDACTED] signed a MIBridges Online Application on [REDACTED] [REDACTED] 2017, acknowledging his rights and responsibilities to report changes (Exhibit #1). On this application he applied for MA.

Respondent was mailed a Health Care Determination Notice (DHS-1606) on January 25, 2017, notifying him of the information the Department used to calculate his household's MA benefits and when to report changes (Exhibit #2).

A review of department case notes and client contact documentation indicates at no time during the alleged OI period did Respondent report the change in household income to MDHHS. During the alleged OI period, Respondent received \$8,269.57 in MA benefits (Exhibit #3).

Per the Work Number, employment verification service, Respondent was working for [REDACTED] with a first check date of June 1, 2017, (Exhibit #4). After allowing department mandated reporting and processing time, (10-10-12) established client error overissuance is from August 1, 2017, through April 30, 2019, for \$8,269.57.

Per Federal Poverty Income Levels for 2017 (Exhibit #5) Respondent had to be below \$1,336.65 in monthly income. Per Federal Poverty Levels for 2018 (Exhibit #6) the Respondent had to be below \$1,345.52 in monthly income. Per Federal Poverty Levels for 2019 (Exhibit #7) the Respondent had to be below \$1,384.31

in monthly income. Per a MA OI Spreadsheet (Exhibit #8) Respondent was over the income levels from August 1, 2017, through April 30, 2019. Per capitation rates (Exhibit #3) Respondent was over issued MA HMP benefits for \$8,269.57.

The OIG requested that (i) Respondent repay \$8,269.57 to MDHHS for MA benefits that Respondent was ineligible to receive. A notice of hearing was mailed to Respondent at the last known address and was not returned by the United States Postal Services as undeliverable.

In this case, MDHHS alleges that Respondent committed an IPV based on his failure to report to the Department earned income from employment within 10 days as required by Department policy. Therefore, MDHHS has presented clear and convincing evidence that Respondent committed an IPV.

Overissuance

When a client group receives more benefits than entitled to receive, MDHHS must attempt to recoup the OI as a recipient claim. 7 CFR 273.18(a)(2); BAM 700. The amount of a MA OI is the benefit amount the client actually received minus the amount the client was eligible to receive. 7 CFR 273.18(c)(1); BAM 720, BAM 715; BAM 705.

In this case, MDHHS alleged that Respondent was overissued MA benefits totaling \$8,269.57 during the fraud period. Therefore, MDHHS is entitled to repayment from Respondent of \$8,269.57 in overissued MA benefits.


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:

1. MDHHS 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 \$8,269.57.

IT IS ORDERED that MDHHS initiate recoupment and/or collection procedures in accordance with MDHHS policy for a MA OI in the amount of \$8,269.57, less any amounts already recouped/collected for the fraud period.

LL/hb



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

DHHS

Montcalm County via electronic mail

Policy-Recoupment via electronic mail

L. Bengel via electronic mail

Petitioner

OIG
PO Box 30062
Lansing, MI 48909-7562

Respondent

[REDACTED], MI [REDACTED]