



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]
[REDACTED]

Date Mailed: January 6, 2021
MOAHR Docket No.: 20-005124
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

**HEARING DECISION FOR
RECOUPMENT**

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 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. After due notice, a hearing was held on December 16, 2020, via telephone conference line. MDHHS was represented by Monica Tardif, regulation agent with the Office of Inspector General. Respondent participated and was unrepresented. [REDACTED] of Wayne County Community Mental Health testified on behalf of Respondent.

ISSUE

The issue is whether MDHHS established an overissuance (OI) claim due to allegedly 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 [REDACTED] 2018, Respondent applied for MA benefits.
2. On an unspecified date, MDHHS approved Respondent for MA.
3. From April 20, 2018, through June 15, 2018, Respondent received weekly employment income from [REDACTED] (hereinafter, "Employer1"), a temporary employment agency.

4. On [REDACTED] 2018, Respondent applied for Food Assistance Program (FAP) benefits. Respondent reported himself as the only household member. Income from Employer1 was reported.
5. On June 22, 2018, Respondent reported to MDHHS that his last work assignment ended and that he is awaiting a new assignment from Employer1.
6. From July 6, 2018, through September 2018, Respondent received income from Employer1.
7. From October 5, 2018, through February 2019, Respondent received biweekly employment income from [REDACTED] (hereinafter, "Employer2").
8. From August 2018, through February 2019, Respondent's monthly gross income exceeded \$2,677.
9. From September 2018 and December 2018, through February 2019, Respondent was a non-senior, non-disabled, non-pregnant, unmarried individual who was not a caretaker of minor children.
10. In September 2018, and from December 2018 through February 2019, Respondent received Medicaid benefits at a total cost of \$1,433.98 to the State of Michigan.
11. As of February 2019, Respondent had not reported to MDHHS income from Employer1 or Employer2 since June 22, 2018.
12. On July 13, 2020, MDHHS requested a hearing to establish a claim for \$1,433.98 in MA benefits allegedly overissued to Respondent in September 2018 and from December 2018 through February 2019 (hereinafter, "OI period").

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. MDHHS administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k. MA 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 \$1,433.98 recoupment claim against Respondent for MA benefits allegedly overissued in September 2018 and from December 2018 through February 2019. Exhibit A, p. 1. An unsigned Intentional

Program Violation Repayment Agreement sent to Respondent specifically alleged that the claim was based on Respondent's failure to timely report employment income. Exhibit A, pp. 50-51.

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 was ineligible for Medicaid benefits during the OI period. To determine whether Respondent was ineligible, an analysis of Medicaid categories must be undertaken.

The Medicaid program includes several sub-programs or categories. BEM 105 (January 2020), 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.*

Throughout the alleged OI period, Petitioner was not disabled, not a senior, not pregnant, not a Medicare recipient, and not a caretaker to minor children. Under the circumstances, Petitioner is potentially only eligible to receive MA benefits under the HMP category. MDHHS alleged that Petitioner was ineligible for HMP due to excess income.

HMP is a health care program administered by MDHHS's 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.

To determine whether an individual is financially eligible for Medicaid using the MAGI-based methods set forth in this section, a State may elect in its State plan to base financial eligibility either on current monthly household income and family size or income based on projected annual household income and family size for the remainder of the current calendar year. 42 CFR 435.603(h)(2). In determining current monthly or projected annual household income and family size under paragraphs (h)(1) or (h)(2) of this section, 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). Effective November 1, 2017, the State of Michigan elected to determine MAGI-related financial eligibility for ongoing recipients based on currently monthly income and family size.¹

MAGI can be defined as a household's adjusted gross income with any tax-exempt interest income and certain deductions added back.² Common deductions and disregards which should be factored in determining a person's adjusted gross income include some alimony payments, unreimbursed business expenses, certain Health Savings Account payments, and student loan interest.³

Respondent's application dated [REDACTED], 2018, reported himself as the only household member. Exhibit A, pp. 7-37. Respondent testified that his application incorrectly reported that his child did not live with him. Respondent also testified that he did not complete the application. Even accepting Respondent's testimony as accurate, the application was signed by Respondent and there is no evidence that MDHHS should have considered HMP eligibility for a group other than one person. Also, Respondent's testimony suggested, at the time, he lived in a shelter and without children. Given the evidence, Respondent was a tax filer with no tax dependents. As a tax filer with no dependents, Respondent's HMP group size would be one person. BEM 211 (January 2016) pp. 1-2.

HMP income limits are based on 133% of the federal poverty level. RFT 246 (April 2014), p. 1. The 2018 federal poverty level is \$12,140 for a 1-person group residing in the contiguous 48 states.⁴ For Respondent to be eligible for HMP in 2018, countable income would have to fall at or below \$16,146.20 (\$1,345.52 per month). The 2019 federal poverty level is \$12,490 for a 1-person group residing in the contiguous 48 states.⁵ For Respondent to be eligible for HMP in 2019, countable income would have to fall at or below \$16,611.70 (\$1,384.31 per month)

MDHHS presented Respondent's income documents from Employer1 and Employer2 listing all of Respondent's pays during the alleged OI period. Exhibit A, pp. 43-45 and 48-49. Respondent's gross monthly income was as follows (dropping cents):

August 2018	\$5,806
September 2018	\$4,452
October 2018	\$2,677
November 2018	\$6,166
December 2018	\$3,438

¹ https://www.michigan.gov/documents/mdhhs/MAGI-Based_Income_Methodologies_SPA_17-0100_-_Submission_615009_7.pdf

² https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Marketplaces/Downloads/Application-Spotlight_Income.pdf

³ *Id.*

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

⁵ <https://aspe.hhs.gov/2019-poverty-guidelines>

January 2019	\$3,222
February 2019	\$3,680

For all months immediately before and during the OI period, Respondent's income exceeded the HMP income limit.⁶ Also, Respondent's monthly income of at least \$2,677 exceeded the HMP income limits by more than 5%.⁷

Concerning potential MAGI deductions, Respondent testified that he paid child support. Unfortunately for Respondent, child support payments do not affect a MAGI calculation.⁸ The evidence established that Respondent's net countable MAGI income exceeded the eligibility for HMP.

MDHHS delayed beginning an overissuance period until September 2018 despite Respondent restarting employment with Employer1 in July 2018. The delay is compliant with policy which requires MDHHS to begin a MA-OI period no earlier than 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, MDHHS may seek recoupment for client errors or IPVs. BAM 710 (January 2018), p. 1. MDHHS may not pursue overissuances for agency errors. *Id.*

MDHHS alleged that Respondent was at fault for the OI by not timely reporting income. To support its allegation, MDHHS presented comments on Respondent's case which notably did not include a documented reporting of income from Employer2 or a restart of income from Employer1. Exhibit A, pp. 38-41. Respondent's testimony acknowledged that he did not report the income to MDHHS. Respondent testified that he told a staff member of the shelter where he was residing and implied that he expected the shelter staff to report the income to MDHHS on his behalf. There was no evidence that any staff member reported Respondent's employment income to MDHHS or had a responsibility to do so. Respondent should have followed-up with his expectation rather than assuming that shelter staff would report his income to MDHHS.

A staff member of Respondent's current shelter testified that Respondent was diagnosed with schizophrenia, ADHD, and other disorders.⁹ Respondent's medical obstacles, as well as his erratic behavior during the hearing, might be intended to show that Respondent may not have the capability to report his income. The evidence established that Respondent was capable of reporting employment, as reflected by the reporting of stopped income from Employer1 on June 22, 2018. Further, MDHHS is

⁶ Respondent's income exceeded the HMP limit for all months from August 2018 through February 2019, though MDHHS only alleged an OI period for September 2018 and December 2018 through February 2019.

⁷ MDHHS applies a 5% disregard based on the federal poverty level when the disregard is the difference between eligibility and non-eligibility. BEM 500 (July 2017) p. 5.

⁸ <https://www.irs.gov/faqs/interest-dividends-other-types-of-income/alimony-child-support-court-awards-damages/alimony-child-support-court-awards-damages-1>

⁹ There was no evidence that Respondent was certified as disabled by any government agency.

entitled to recoup MA benefits that Respondent was ineligible to receive when due to either an IPV or a client rather than agency error. In this case, Respondent's receipt of over-issued MA benefits was not due to agency error.


Generally, the amount of MA overissuance is the cost of MA payments issued by MDHHS on behalf of a client. *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 cost of over-issued MA benefits issued on Respondent's behalf. MDHHS presented documentation of Respondent's MA costs during the OI period. Exhibit A, pp. 52-57. Payments during the OI period for Respondent's MA coverage totaled \$1,433.98.

The evidence established that Respondent received an OI of MA benefits in September 2018 and December 2018 through February 2019 at a cost to the State of Michigan of \$1,433.98. The evidence also established that Respondent was at fault for the OI because he failed to timely report employment income to MDHHS. Thus, MDHHS established a basis for recoupment of \$1,433.98 against Respondent.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS established a basis for recoupment for \$1,433.98 in MA benefits issued to Respondent in September 2018 and from December 2018 through February 2019. The MDHHS request to establish recoupment against Respondent is **APPROVED**.

CG/tm



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-Washtenaw-Hearings
OIG Hearings
LBengel
Policy Recoupment
MOAHR

Respondent – Via First-Class Mail:

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