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GOVERNOR

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

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DIRECTOR

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Date Mailed: February 12, 2021
MOAHR Docket No.: 20-007022
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

**HEARING DECISION TO ESTABLISH
INTENTIONAL PROGRAM VIOLATION AND 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 scheduled for February 8, 2021. The hearing was held on the scheduled hearing date and at least 30 minutes after the scheduled hearing time, via telephone conference line. MDHHS was represented by Ian Gill, regulation agent with the Office of Inspector General. Respondent did not participate in the hearing.

ISSUES

The first issue is whether MDHHS established a claim for overissued Medical Assistance (MA) benefits against Respondent.

The second issue is whether MDHHS established by clear and convincing evidence that Respondent committed a Food Assistance Program (FAP)-related intentional program violation (IPV) which justifies imposing a disqualification.

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], 2016, Respondent applied for FAP and MA benefits and reported a household with no other members and no employment income. Additionally, Respondent reported being 19-64 years old, not being a caretaker to minor children, not pregnant, and not disabled. Boilerplate

stated that clients are to report changes in income to MDHHS within 10 days.

2. On February 3, 2016, MDHHS mailed to Respondent notice of an approval for FAP benefits beginning January 2016 based on \$0 employment income. Boilerplate stated that clients are to report changes in income to MDHHS within 10 days.
3. From February 23, 2016, through November 2016, Respondent received ongoing employment income from [REDACTED] (hereinafter, "Employer").
4. From April 2016 through November 2016, Respondent received \$1,552 in FAP benefits based on \$0 employment income.
5. From April 2016 through November 2016, Respondent's gross monthly income from Employer was at least \$1,369.
6. From April 2016 through November 2016, MDHHS issued MA benefits to Respondent at a total cost of \$3,185.72.
7. On October 12, 2016, MDHHS mailed Respondent a Wage Match Client Notice requesting information about income from Employer.
8. On August 1, 2019, MDHHS calculated that Respondent received an overissuance (OI) of \$1,424 in FAP benefits from April 2016 through November 2016. The calculation factored that Respondent failed to timely report employment income from Employer.
9. On August 1, 2019, MDHHS established a recipient claim against Respondent for \$1,424 in overissued FAP benefits from April 2016 through November 2016.
10. On [REDACTED] 2020, MDHHS requested a hearing to establish a claim for \$3,185.72 in allegedly overissued Medicaid benefits from April 2016 through November 2016. Additionally, MDHHS sought to establish a FAP-related IPV justifying imposing a 1-year disqualification period stemming from overissued FAP benefits from April 2016 through November 2016.

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, in part, to establish a recoupment claim of \$3,185.72 against Respondent for allegedly overissued MA benefits. Exhibit A, p. 1-2. An unsigned Intentional Program Violation Repayment Agreement alleged that Respondent received overissued MA benefits from April 2016 through November 2016 due to not timely reporting employment income.¹ Exhibit A, pp. 88-89.

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.*

In the present case, MDHHS seeks to establish an OI of MA benefits. To establish an OI of MA benefits, a consideration 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 Medicaid 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 [REDACTED] 2016 and reported being 19-64 years old, not being a caretaker to minor children, not pregnant, and not disabled. Exhibit A, pp. 10-35. MDHHS testimony implied that Respondent held the same circumstances 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, the only potential category for Medicaid is under HMP. MDHHS determined that Respondent had excess income for HMP eligibility.

¹ An IPV repay agreement is more relevant to the FAP-related IPV than the alleged MA overissuance. This is because an IPV is not required to establish an overissuance of MA benefits. The repay agreement is cited in the context of the alleged OI of MA benefits because it is used to notify clients of MA OIs.

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.²

Respondent reported on her application having no other household members. The evidence supports finding that Respondent's HMP eligibility should be based on a group size of one person.³

As part of its investigation, MDHHS requested Respondent's income records from Employer. Exhibit A, p. 44. The records listed income to Respondent from February 23, 2016, through November 2016. Exhibit A, pp. 45-46. For all months from April 2016 through November 2016, Respondent's gross income from Employer was at least \$1,369.⁴

MAGI can be defined as a household's adjusted gross income with any tax-exempt interest income and certain deductions added back.⁵ 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.⁶ There was no evidence of applicable deductions. For purposes of MAGI eligibility, Respondent's income from April 2016 through November 2016, will be accepted as \$1,369.

² https://www.michigan.gov/documents/mdhhs/MAGI-Based_Income_Methodologies_SPA_17-0100_-_Submission_615009_7.pdf

³ 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.

⁴ MDHHS presented a worksheet listing Respondent's gross income for months in the alleged OI period. Exhibit A, p. 84.

⁵ https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Marketplaces/Downloads/Application-Spotlight_Income.pdf

⁶ *Id.*

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 2016 federal poverty level is \$11,880 for a 1-person group.⁷ For Respondent to be eligible for HMP in 2016, countable income would have to fall at or below \$15,800.40 (\$1,316.70 per month).

For all months immediately before and during the OI period, Respondent's income of at least \$1,369 exceeded the HMP income limit. Also, Respondent's monthly income exceeded the HMP income limits by more than 5%.⁸

MDHHS delayed beginning an overissuance period until April 2016 despite Respondent receiving employment income beginning February 2016. The delay is proper as Respondent's income from Employer did not exceed the income limit for HMP in months outside of the OI period.

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 claim against Respondent, MDHHS must establish that Respondent was at fault for the OI of Medicaid.

MDHHS mailed Respondent a Wage Match Client Notice on October 12, 2016. Exhibit A, pp. 42-43. MDHHS submits client Social Security Numbers to UIA quarterly to be cross-matched with the work history records submitted by Michigan employers. BAM 802 (January 2016) p. 1. This information is compared to the client's gross earnings record in Bridges. *Id.* When there is a discrepancy, a Wage Match Client Notice is sent to the client. Thus, the sending of a Wage Match Client Notice at least establishes that income from Employer was not previously budgeted on Respondent's case.

Also, MDHHS presented documentation of a claim of \$1,424 against Respondent for over-issued FAP benefits from April 2016 through November 2016 due to untimely reported income. Exhibit A, p. 87. The establishment of an OI of FAP benefits due to unreported employment income applies to the alleged overissuance of MA benefits from April 2016 through November 2016. Also, MDHHS presented comments documented by specialists for Respondent's case; notably, the comments did not include a documented reporting of income by Respondent during or before the OI period. Exhibit A, pp. 60-61. Respondent did not participate in the hearing to claim a timely reporting.

Respondent should have been aware of the obligation to report changes to MDHHS. Respondent's application dated [REDACTED], 2016, included boilerplate stating that clients are to report income changes to MDHHS within 10 days. Exhibit A, p. 18. MDHHS also mailed Respondent a FAP benefit approval notice on February 3, 2016, which also included boilerplate stating that clients are to report changes in income within 10 days. Exhibit A, pp. 36-39.

⁷ <https://aspe.hhs.gov/prior-hhs-poverty-guidelines-and-federal-register-references>

⁸ 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. Applying the 5% increase results in an amended monthly income limit of \$1,366.20.

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 cost of MA benefits issued to Respondent.

MDHHS presented documentation of Respondent's MA costs during the OI period. Exhibit A, pp. 80-82. The stated cost of Respondent's Medicaid benefits from April 2016 through November 2016 totaled \$3,185.72.

The evidence established that Respondent received an OI of medical benefits from April 2016 through November 2016 which cost the State of Michigan \$3,185.72. The evidence also established that Respondent was at fault for the OI. Thus, MDHHS established a claim of \$3,185.72 against Respondent.

The Food Assistance Program [formerly known as the Food Stamp program] is established by the Food and Nutrition Act of 2008, as amended, 7 USC 2011 to 2036a and is implemented by the federal regulations contained in 7 CFR 273. MDHHS administers FAP pursuant to MCL 400.10, the Social Welfare Act, MCL 400.1-.119b, and Mich Admin Code, R 400.3001-.3011. MDHHS policies are contained in the Bridges Administrative Manual (BAM), Bridges Eligibility Manual (BEM), and Reference Tables Manual (RFT).

MDHHS also requested a hearing to establish a FAP-related IPV disqualification against Respondent. MDHHS may request a hearing to establish an IPV. BAM 600 (October 2017) p. 5. An unsigned Intentional Program Violation Repayment Agreement alleged that Respondent received an OI of FAP benefits due to a failure to timely report employment income from Employer. Exhibit A, pp. 88-89.

The types of recipient claims are those caused by agency error, unintentional recipient claims, and IPV. 7 CFR 273.18(b). An IPV shall consist of having intentionally:

- (1) Made a false or misleading statement, or misrepresented, concealed or withheld facts; or
- (2) Committed any act that constitutes a violation of Supplemental Nutrition Assistance Program (SNAP), SNAP regulations, or any state statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of SNAP benefits or EBT cards. 7 CFR 273.16(c).

An IPV requires clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, an IPV. 7 CFR 273.16(e)(6). An evidentiary standard of clear and convincing is "the most demanding standard applied in civil cases." *In re Martin*, 450 Mich 204, 226-227; 538 NW2d 399 (1995). Clear and convincing evidence must be strong enough to cause a clear and firm belief that the proposition is true; it is more than proving that the proposition is probably true. M Civ JI

8.01. It is a standard which requires reasonable certainty of the truth; something that is highly probable. Black's Law Dictionary 888 (6th ed. 1990).

Federal regulations require states to mandate that change reporters report income within 10 days after the income begins. 7 CFR 273.12(a)(2). Generally, change reporters are those without reported employment income.⁹ MDHHS policy reflects federal regulations. BAM 105 (January 2015), p. 7. Respondent was likely a change reporter as of the OI period because employment income was not reported on Respondent's application requesting FAP benefits dated [REDACTED], 2016. Exhibit A, pp. 10-35. There was no evidence of a reporting of employment income from the application date through the end of the OI period. As a change reporter, Respondent was obligated to report the start of employment income to MDHHS within 10 days after the income started.

An IPV based on untimely reported income requires that unreported income caused an OI. Recipient claim amounts not caused by trafficking are calculated by determining the correct amount of benefits for each month there was an OI and subtracting them from the actual issuances.¹⁰ CFR 273.18(c)(1). MDHHS presented FAP-OI budgets from the OI months. Exhibit A, pp. 63-79. Actual FAP issuances to Respondent were taken from documentation listing issuances totaling \$1,552 during the OI period. Exhibit A, pp. 47-48. Presumably, the FAP-OI budgets factored the group size, income, and expenses from original budgets other than adding Respondent's actual gross pays from Employer.¹¹ Documentation from Employer listed pays to Respondent from February 23, 2016, through November 2016. Exhibit A, pp. 45-46. MDHHS factored income from Employer as untimely reported, thereby depriving Respondent of a 20% credit for timely reported income. Using the procedures set forth in BEM 556 for calculating FAP eligibility, an OI of \$1,424 was calculated. MDHHS also presented a claim details document listing an already established FAP claim against Respondent of \$1,424 for previously overissued FAP benefits. Exhibit A, p. 87.

The evidence established that Respondent received an OI of \$1,424 in FAP benefits from April 2016 through November 2016 due to untimely reported employment income. For an IPV, MDHHS must clearly and convincingly establish that Respondent purposely failed to report income to receive an OI of FAP benefits.

MDHHS alleged that Respondent should have been aware of the responsibility to report employment income to MDHHS within 10 days after Respondent's employment income started February 23, 2016. MDHHS sent Respondent a FAP approval notice on February 3, 2016, which included boilerplate stating clients have the responsibility to

⁹ Simplified reporters, opposed to change reporters, need only report when household income exceeds the simplified reporting income limit. Simplified reporters are those that reported employment income during the ongoing benefit period.

¹⁰ Additionally, MDHHS is to subtract any benefits that were expunged (i.e.- unused benefits which eventually expire from non-use). There was no evidence that over-issued FAP benefits were expunged.

¹¹ Factoring gross income is compliant with employment income policy (BEM 501) and factoring actual pays is compliant with policy directing how to calculate an overissuance based on client error (BAM 715).

report employment income to MDHHS within 10 days after the income starts. Exhibit A, pp. 36-39. Additionally, the notice included a budget summary listing that \$0 employment income was factored in Respondent's ongoing FAP eligibility. The inclusion of boilerplate reporting responsibilities within documents signed by and/or sent to Respondent does not clearly and convincingly establish that Respondent read, understood, and/or retained the language. Similarly, including a summary listing that no employment income was factored in the determination does not place a client on notice of a responsibility to later report when income begins.

A written misreporting of misinformation is highly persuasive evidence of an intent consistent with an IPV. MDHHS did not present evidence of a written misreporting by Respondent.

Given the evidence, Respondent might have purposely ignored the responsibility to report starting employment income, but this was not clearly and convincingly established. Thus, MDHHS failed to establish that Respondent committed an IPV.

Individuals found to have committed a FAP-related IPV shall be ineligible to receive FAP benefits. 7 CFR 273.16(b). The standard disqualification period is used in all instances except when a court orders a different period. IPV penalties are as follows: one year for the first IPV, two years for the second IPV, and lifetime for the third IPV. *Id.* and BAM 725 (January 2016), p. 16.


Without a finding that Respondent committed an IPV, an IPV disqualification cannot follow. Thus, MDHHS is denied its request to establish a 1-year FAP-related IPV disqualification against Respondent.

DECISION AND ORDER

The administrative law judge, based upon the above findings of fact and conclusions of law, finds that MDHHS failed to establish that Respondent committed an IPV stemming from FAP benefits overissued from April 2016 through November 2016. The MDHHS request to establish a FAP-related IPV disqualification of 1 year against Respondent is **DENIED**.

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 \$3,185.72 in MA benefits from April 2016 through November 2016. The MDHHS request to establish a recoupment claim of \$3,185.72 against Respondent is **APPROVED**.

CG/tm



Christian Gardocki
Administrative Law Judge
for Elizabeth Hertel, 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-906WestHearings
OIG Hearings
LBengel
Policy Recoupment
MOAHR

Respondent – Via First-Class Mail:

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