



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR



Date Mailed: May 23, 2022
MOAHR Docket No.: 21-005039-RECON
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Linda Jordan

HEARING DECISION

The Michigan Department of Health and Human Services (MDHHS or Department) requested a hearing alleging that Respondent [REDACTED] committed a client error and was overissued benefits. 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 [REDACTED] 2022. Brent Brown, Regulation Agent of the Office of Inspector General (OIG), represented MDHHS. Respondent appeared and represented himself.

ISSUE

Did Respondent receive an overissuance (OI) of Medicaid (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. On [REDACTED] 2016, Respondent applied for health care coverage through the Federally Facilitated Marketplace and the application was transferred to MDHHS (Exhibit A, pp. 7-16). MDHHS approved Respondent for the Healthy Michigan Plan (HMP) MA (Exhibit A, p. 18).
2. On [REDACTED] 2018, MDHHS sent Respondent a Health Care Coverage Determination Notice, indicating that he was approved for MA, effective [REDACTED] 2018 ongoing (Exhibit A, pp. 19-21). The approval was based on an annual income of \$0.00 and a household size of one (Exhibit A, p. 20). The Notice also indicated that Respondent was required to contact MDHHS if the information was

incorrect and to report changes that may affect eligibility within ten days (Exhibit A, p. 20).

3. On [REDACTED] 2020, MDHHS received payroll records from IBM Corporation (Employer), which showed that Respondent received income from Employer from [REDACTED] 2019 to [REDACTED] 2020 (Exhibit A, pp. 22-60).
4. From [REDACTED] 2019 to [REDACTED] 2020, MDHHS paid \$[REDACTED] towards Respondent's MA coverage (Exhibit A, p. 67).
5. Respondent was aware of the responsibility to report truthful and accurate information regarding his circumstances.
6. No evidence was presented that Respondent had an apparent physical or mental impairment that would limit the understanding or ability to accurately report information regarding his circumstances.
7. On [REDACTED] 2021, MDHHS OIG filed a hearing request alleging that Respondent failed to report a change in household income timely and as a result received MA benefits from [REDACTED] 2019 to [REDACTED], 2020 (alleged OI period) that Respondent was ineligible to receive. OIG requested that Respondent repay [REDACTED] to MDHHS for MA benefits that Respondent was ineligible to receive.
8. On [REDACTED] 2022, the Michigan Office of Administrative Hearing and Rules (MOAHR) conducted a hearing in this matter in Docket No.: 21-005039. Respondent did not appear and the hearing was held in his absence.
9. On [REDACTED] 2022, the undersigned Administrative Law Judge issued a Hearing Decision in Docket No.: 21-005039, which found that Respondent committed a client error by failing to report his earned income to MDHHS and approved MDHHS' request to establish a debt against Respondent in the amount of [REDACTED] for overissued MA benefits.
10. On [REDACTED] 2022, MOAHR received from Respondent a request for rehearing and/or reconsideration of the Hearing Decision issued on [REDACTED] 2022. The request indicated that Respondent had recently moved and did not receive proper notice of the hearing. Respondent's request was granted and the Hearing Decision dated [REDACTED] 2022 was vacated.
11. A notice of rehearing was mailed to Respondent at the last known address and was not returned by the United States Postal Service 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 Medicaid (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.*

MDHHS may request a hearing to establish a debt. BAM 600 (██████ 2021) p. 5. For MA benefits, MDHHS may seek recoupment for client errors or intentional program violations (IPVs). BAM 710 (██████ 2018), p. 1. MDHHS may not pursue OIs for agency errors. *Id.* A client error occurs when a client receives more benefits than they were entitled to receive because the client gave incorrect or incomplete information to MDHHS. BAM 700 (██████ 2018), p. 7. An IPV occurs when there is an OI and MDHHS establishes by clear and convincing evidence that the client intentionally withheld or misrepresented information for the purpose of establishing, maintaining, increasing, or preventing reduction of program benefits or eligibility. BAM 700, p. 8. An IPV results in a client's disqualification from program benefits for programs other than MA; there is no disqualification for an MA IPV. BAM 720, pp. 15-16. An agency error is caused by incorrect actions, including delayed action or inaction, by MDHHS, including a failure to process available information. BAM 705 (██████ 2018), p. 1.

In this case, MDHHS alleged that Respondent committed client error by failing to report earned income from Employer in a timely manner. Clients are required to report changes in circumstance that may affect eligibility for program benefits within ten days of receiving the first payment reflecting the change. BAM 105 (██████ 2019), pp. 11-12. MDHHS introduced evidence that Respondent was approved for the Healthy Michigan Plan (HMP) MA and was actively receiving benefits when he began employment at Employer (Exhibit A, p. 68). The record shows that Respondent received his first paycheck from Employer on ████████ 2019 (Exhibit A, p. 24). MDHHS asserted that there was no evidence that Respondent attempted to report this income to MDHHS and presented documentary evidence that Respondent's earnings from Employer made him ineligible for HMP MA due to excess income (Exhibit A, pp. 66-67).

At the hearing, Respondent credibly testified that he enrolled in HMP MA while he was a student in college and was not employed. Subsequently, in the summer or fall of 2018, he joined his wife's insurance plan and no longer required MA. Respondent testified that he called HMP customer service to cancel his insurance and HMP customer service instructed him to call MDHHS. Respondent stated that he called the local MDHHS office and after being transferred multiple times, was able to reach a representative.

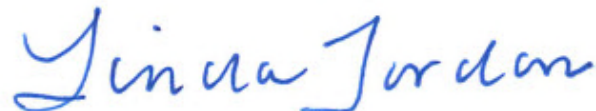
Respondent told the MDHHS representative that he no longer needed MA and that he would like to cancel his coverage. Respondent testified that he believed that he had done what was necessary to cancel the coverage and that he had complied with program rules and regulations. He further stated that he did not use the insurance after he made this call because he had other coverage and he thought that his case was closed. MDHHS did not present any evidence to refute Respondent's testimony.

Based on a full review of the record, MDHHS has not presented sufficient evidence to show that the MA OI was caused by a client error, rather than an agency error. Agency error includes situations in which MDHHS fails to properly process available information. BAM 705, p. 1. MDHHS is not entitled to pursue a MA OI for an agency error. BAM 700, p. 7. Therefore, MDHHS is not entitled to repayment from Respondent of [REDACTED] 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 Respondent did not receive an OI of MA benefits in the amount of [REDACTED]

IT IS ORDERED that MDHHS delete the [REDACTED] OI in its entirety and cease any recoupment/collection action.



Linda Jordan
Administrative Law Judge

LJ/tm

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

Sent Via Email:

MDHHS-Wayne-19-Hearings
MDHHS-OIG-Hearings
LBengel
Policy Recoupment
MOAHR

Sent First-Class Mail:

