



GRETCHEN WHITMER
GOVERNOR

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

MARLON I. BROWN, DPA
ACTING DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: November 8, 2023
MOAHR Docket No.: 23-003170
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [REDACTED]

ADMINISTRATIVE LAW JUDGE: Colleen Lack

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

The Michigan Department of Health and Human Services (MDHHS or the Department) requested a hearing alleging that Respondent [REDACTED] [REDACTED] committed 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 October 11, 2023.

Gina Starzec, Regulation Agent of the Office of Inspector General (OIG), represented MDHHS. Karrie Felenchak, Regulation Agent, was present as an observer.

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. From August 1, 2021 to February 28, 2022, MDHHS paid \$[REDACTED] towards Respondent's MA coverage. (Exhibit A, pp. 118-122)
2. On August [REDACTED] 2021, Respondent submitted an Assistance Application for MA benefits for herself and reported an address of [REDACTED]. No other household members and no household income was reported. (Exhibit A, pp. 9-12)
3. Respondent's signature on the Assistance Application certified that she read and understood the rights and responsibilities. This would include providing accurate information and timely reporting changes. (Exhibit A, pp. 12-58; Regulation Agent Testimony)
4. On August [REDACTED] 2021, a Health Care Coverage Determination Notice was issued to Respondent approving MA benefits for Respondent. This Notice also reminded Respondent of the responsibility to report changes that may affect eligibility within 10 days. A blank Change Report form was included. (Exhibit A, pp. 59-61)
5. A marriage license shows that Respondent married [REDACTED] on November [REDACTED] 2000. (Exhibit A, p. 62)
6. A report from The Work Number documented that Respondent's husband started work with [REDACTED] on January [REDACTED] 2020 and reported his address as [REDACTED]. Respondent's husband's earnings during the fraud period were documented. (Exhibit A, pp. 63-65)
7. Department of State records show that Respondent and her husband utilized the [REDACTED] address for their licenses during the fraud period. (Exhibit A, pp. 66-82)
8. On February [REDACTED] 2022, a New Hire Client Notice was issued to Respondent indicating a computer cross match indicated she was employed with Detroit Recovery Project. The Department requested that Petitioner return the completed form by February 17, 2022. (Exhibit A, pp. 115-117)
9. Employment records from [REDACTED] show Respondent's earnings from pay dates February 10, 2022 through March 9, 2023. (Exhibit A, pp. 83-112)
10. Respondent was aware of the responsibility to accurately report information and any changes to the Department. (Exhibit A, pp. 12-58 and 60; Regulation Agent Testimony)
11. Respondent did not have an apparent physical or mental impairment that would limit the ability to understand or fulfill the reporting requirements. (Exhibit A, pp. 11 and 126)

12. On June 7, 2023, MDHHS' OIG filed a hearing request alleging that Respondent intentionally failed to report household income and as a result, received MA benefits from August 1, 2021 to February 28, 2022, (fraud period) that Respondent was ineligible to receive. OIG requested that Respondent repay to MDHHS \$[REDACTED] for MA benefits that Respondent was ineligible to receive. (Exhibit A, pp. 1-128)
13. 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 (October 1, 2017), p. 12-13.

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, p. 1.

In this case, MDHHS alleges that Respondent committed an IPV based on a failure to report household income, resulting in receiving a greater amount of MA benefits from August 1, 2021 to February 28, 2022, (fraud period) than Respondent was eligible to receive.

The Department has established that Respondent was aware of the responsibilities to accurately report information and to timely report any changes to the Department. Households must report all changes in household composition, such as the addition or loss of a household member. 7 CFR 273.12(a)(1)(ii). Households must also report a change in the source of income, including starting or stopping a job or changing jobs, if the change in employment is accompanied by a change in income. 7 CFR 273.12(a)(1)(i)(B). Department policy requires clients to report any change in circumstances that will affect eligibility or benefit amount within 10 days. This includes changes with household composition and income. BAM 105 (August 1, 2021), pp. 11-13. Further, clients must completely and truthfully answer all questions on forms and in interviews. BAM 105, p. 9. Respondent's signature on the Assistance Application certified that that she read and understood the rights and responsibilities. This would include providing accurate information and timely reporting changes. The Health Care Coverage Determination Notice also reminded Respondent of the responsibility to report changes that may affect eligibility within 10 days. (Exhibit A, pp. 12-58 and 60; Regulation Agent Testimony). Respondent did not have an apparent physical or mental impairment that would limit the ability to understand or fulfill the reporting requirements. (Exhibit A, pp. 11 and 126).

On August [REDACTED] 2021, Respondent submitted an Assistance Application for MA benefits for herself and reported an address of [REDACTED]. No other household members and no household income was reported. (Exhibit A, pp. 9-12).

However, the evidence shows that Respondent was married, her husband was living in the home, and there was household income. A marriage license shows that Respondent married [REDACTED] on November [REDACTED] 2000. (Exhibit A, p. 62). A report from The Work Number documented that Respondent's husband started work with [REDACTED] on January [REDACTED] 2020 and reported his address as [REDACTED]. Respondent's husband's earnings during the fraud period were documented. (Exhibit A, pp. 63-65). Department of State records show that Respondent and her husband utilized the [REDACTED] address for their licenses during the fraud period. (Exhibit A, pp. 66-82). On February [REDACTED] 2022, a New Hire Client Notice was issued to Respondent indicating a computer cross match indicated she was employed with [REDACTED]. The Department requested that Petitioner return the completed form by February 17, 2022. (Exhibit A, pp. 115-117). Employment records from [REDACTED] show Respondent's earnings from pay dates February 10, 2022 through March 9, 2023. (Exhibit A, pp. 83-112).

There was no evidence that Respondent reported her husband in the home or any household income to the Department in accordance with the reporting responsibilities.

The evidence establishes that Respondent failed to accurately and timely report her husband in the home and household income and to the Department, as required by policy. The corrected household composition and income were utilized to re-determine MA eligibility during the fraud period. Respondent's failure to accurately and timely report her husband in the home and household income resulted in an OI of MA benefits. 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, (October 1, 2018), p. 1. For MA, if the OI is due to unreported income or a change affecting need allowances: (1) if there would have been a deductible or larger deductible, the OI amount is the correct deductible (minus any amount already met) or the amount of MA payments, whichever is less; (2) if there would have been a larger LTC, hospital or post-eligibility patient-pay amount, the OI amount is the difference between the correct and incorrect patient-pay amounts or the amount of MA payments, whichever is less. For an OI due to any other reason, the OI amount is the amount of MA payments. BAM 710, January 1, 2018, pp. 1-2.

In this case, MDHHS alleged that Respondent was overissued MA benefits totaling \$[REDACTED] during the fraud period. From August 1, 2021 to February 28, 2022, MDHHS paid \$[REDACTED] towards Respondent's MA coverage. (Exhibit A, pp. 118-122). However, when the corrected household composition and income were utilized to re-determine eligibility, Respondent was not eligible to receive MA benefits during the fraud period. Therefore, MDHHS is entitled to repayment from Respondent of \$[REDACTED] in overissued MA benefits.

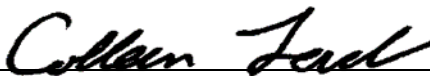
DECISION AND ORDER

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:

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 \$ [REDACTED]

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

CL/dm



Colleen Lack
Administrative Law Judge

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-Electronic Mail :

Petitioner
OIG
**MDHHS-OIG-
HEARINGS@michigan.gov**

DHHS
Denise Key-McCoggle
Wayne-Greydale-DHHS
**MDHHS-Wayne-15-Greydale-
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Policy-Recoupment

StebbinsN

MOAHR

Via-First Class Mail :

Respondent

[REDACTED]
[REDACTED]
[REDACTED]