



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 30, 2023
MOAHR Docket No.: 23-003964
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED] [REDACTED]

ADMINISTRATIVE LAW JUDGE: Kevin Scully

HEARING DECISION FOR INTENTIONAL PROGRAM VIOLATION

Upon the request for a hearing by the Department of Health and Human Services (Department), this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, and in accordance with Titles 7, 42 and 45 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16, and with Mich Admin Code, R 400.3130, and R 400.3178. After due notice, a telephone hearing was held on November 7, 2023, from Lansing, Michigan. The Department was represented by Ryan Sevenski, Regulation Agent of the Office of Inspector General (OIG). Respondent represented himself.

ISSUES

1. Did Respondent receive an overissuance (OI) of Medical Assistance (MA) benefits that the Department is entitled to recoup?
2. Did the Department establish by clear and convincing evidence that Respondent committed an Intentional Program Violation (IPV)?

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 an application for assistance dated January [REDACTED] 2020, Respondent acknowledged the duties and responsibilities of receiving Medical Assistance (MA). Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. Exhibit A, pp 6-12.
2. On January [REDACTED] 2020, the Department notified Respondent that he and the other four members of his household were eligible for Medical Assistance (MA). Exhibit A, pp 13-16.

3. On October [REDACTED] 2021, the Department notified Respondent that he and the other four members of his household were eligible for Medical Assistance (MA). Exhibit A, pp 17-20.
4. Respondent and the other members of his household applied for Medicaid from the state of Tennessee and received those benefits from October 1, 2021, through July 17, 2023. Exhibit A, p 30.
5. Respondent's spouse started employment on October [REDACTED] 2021, and received earned income from that employment from October 21, 2021, through April 28, 2022. The spouse reported to her employer that she was living in [REDACTED] Tennessee. Exhibit A, pp 23-24.
6. Respondent received Medical Assistance (MA) with a value of \$[REDACTED] from December 1, 2021, through April 30, 2022. Exhibit A, pp 31-34.
7. The Department's OIG filed a hearing request on July 18, 2023, to establish that Respondent committed an Intentional Program Violation (IPV). Exhibit A, p 2.
8. On July 18, 2023, the Department sent Respondent an Intentional Program Violation Repayment Agreement (DHS-4350) with notice of a \$4,928.42 overpayment. Exhibit A, pp 35-36.
9. A notice of hearing was mailed to Respondent at the last known address and was not returned by the United States Postal Service as undeliverable.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Health and Human Services Bridges Administrative Manual (BAM), Department of Health and Human Services Bridges Eligibility Manual (BEM), Department of Health and Human Services Reference Tables Manual (RFT), and Department of Health and Human Services Emergency Relief Manual (ERM).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396 through 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 through 42 CFR 420.25. The Department administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.103 through MCL 400.112k of the Social Welfare Act, MCL 400.1 *et seq.*

The Department's OIG requests IPV hearings for the following cases:

- FAP trafficking OIs that are not forwarded to the prosecutor.
- Prosecution of welfare fraud or FAP trafficking is declined by the prosecutor for a reason other than lack of evidence, and
 - the total OI amount for the FIP, SDA, CDC, MA and FAP programs is \$500 or more, or
 - the total OI amount is less than \$500, and
 - the group has a previous IPV, or
 - the alleged IPV involves FAP trafficking, or
 - the alleged fraud involves concurrent receipt of assistance (see BEM 222), or
 - the alleged fraud is committed by a state/government employee.

Department of Health and Human Services Bridges Administrative Manual BAM 720 (October 1, 2017), pp 12-13.

Overissuance

When a client group receives more benefits than it is entitled to receive, the Department must attempt to recoup the overissuance. Department of Human Services Bridges Administrative Manual (BAM) 700 (October 1, 2018), p 1.

Clients must report changes in circumstance that potentially affect eligibility or benefit amount. Changes must be reported within 10 days of receiving the first payment reflecting the change. Department of Health and Human Services Bridges Administrative Manual (BAM) 105 (October 1, 2023), p 12. The Department will act on a change reported by means other than a tape match within 15 workdays after becoming aware of the change, except that the Department will act on a change other than a tape match within 10 days of becoming aware of the change. Department of Health and Human Services Bridges Administrative Manual (BAM) 220 (October 1, 2023), p 7. A pended negative action occurs when a negative action requires timely notice based on the eligibility rules in this item. Timely notice means that the action taken by the department is effective at least 12 calendar days following the date of the department's action. BAM 220, p 12.

To be eligible for MA benefits, a person must be a Michigan resident. A Michigan resident is an individual who is living in Michigan except for a temporary absence. Residency continues for an individual who is temporarily absent from Michigan or intends to return

to Michigan when the purpose of the absence has been accomplished. Department of Health and Human Services Bridges Eligibility Manual (BEM) 220 (January 1, 2023), pp 1-2. A resident of Michigan is a person who is living in this state voluntarily with the intention of making his or her home in this state and not for a temporary purpose and who is not receiving assistance from another state. MCL 400.32.

On an application for assistance dated January ■ 2020, Respondent acknowledged the duties and responsibilities of receiving MA benefits. Respondent did not have an apparent physical or mental impairment that would limit the understanding or ability to fulfill this requirement. On January ■ 2020, the Department notified Respondent that he was eligible for MA benefits.

The hearing record supports a finding that Respondent and the other members of his household moved to Tennessee where they applied for Medicaid and began receiving those benefits on October ■ 2021. Respondent's spouse started employment in Tennessee that was not reported to the Department, although the Department would not have closed Respondent's MA benefits based on this income if it had been reported. If Respondent had reported that he was receiving medical coverage from another state, the Department would have closed his Michigan MA benefits by the first benefit period after November 2, 2021. Respondent received MA benefits with a value of \$■ from December 1, 2021, through April 30, 2022, that he was not eligible for as an active Medicaid recipient in another state.

Respondent testified that he attempted to report to the Department three times but that his telephone calls were not answered. Respondent testified that he left voicemail message and was instructed that he would be called back, but that no one called him.

Respondent failed to present any evidence that he attempted to report a change of residency. No evidence was presented that Respondent reported a change of residency.

This Administrative Law Judge finds that the Department has presented clear and convincing evidence that Respondent intentionally failed to report a change of residency to the Department for the purposes of becoming eligible for and maintaining eligibility for Michigan MA benefits that he would not have been eligible for otherwise.

Clients who commit an IPV are disqualified for a standard disqualification period except when a court orders a different period, or except when the overissuance relates to Medical Assistance (MA). BAM 720, p. 13.

The record evidence indicates that this is Respondent's first established IPV violation.

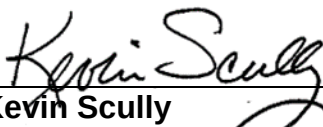
The Department has established an Intentional Program Violation (IPV).

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. The Department has established by clear and convincing evidence that Respondent committed an Intentional Program Violation (IPV).
2. Respondent did receive an overissuance of Medical Assistance (MA) benefits in the amount of \$[REDACTED]
3. The Department is ORDERED to initiate recoupment procedures for the amount of \$[REDACTED] in accordance with Department policy.

KS/dm



Kevin Scully
Administrative Law Judge
Michigan Office of Administrative Hearings
and Rules (MOAHR)

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
Amber Gibson
Ingham County DHHS
MDHHS-Ingham-
Hearings@michigan.gov

Policy-Recoupment

StebbinsN

MOAHR

Via-First Class Mail :

Respondent

[REDACTED]
[REDACTED]
[REDACTED]