



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

ORLENE HAWKS
LARA DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: January 3, 2019
MAHS Docket No.: 18-001099-RECON
Agency No.: [REDACTED]
Petitioner: [REDACTED]

SUPERVISING ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

**AMENDED ORDER DENYING REQUEST FOR REHEARING
AND/OR RECONSIDERATION**

On August 10, 2018, the undersigned Supervising Administrative Law Judge of the Michigan Administrative Hearing System (MAHS) issued an Order Denying Request for Rehearing and/or Reconsideration (Order) in response to the request for rehearing and/or reconsideration by attorney [REDACTED] on behalf of Petitioner [REDACTED] of the Hearing Decision issued by the assigned Administrative Law Judge (ALJ), [REDACTED], at the conclusion of the hearing conducted on April 11, 2018 and June 13, 2018, and mailed on June 18, 2018, in the above-captioned matter. A review of the MAHS records in this matter shows that the Order was sent to Petitioner and a representative for the Department of Health and Human Services, but not to their respective attorneys. Accordingly, the Order is amended as of the date herein for the sole purpose of adding the parties' attorneys as copied parties to the Order and updating the mailing date to extend the opportunity for appeal. No substantive changes to the August 10, 2018 Order have been made.

The rehearing and reconsideration process is governed by the Michigan Administrative Code, Rule 792.11015, *et seq.*, and applicable policy provisions articulated in the Bridges Administrative Manual (BAM), specifically BAM 600, which provide that a rehearing or reconsideration must be filed in a timely manner consistent with the statutory requirements of the particular program that is the basis for the client's benefits application and may be granted so long as the reasons for which the request is made comply with the policy and statutory requirements. MCL 24.287 also provides for rehearing if the hearing record is inadequate for judicial review.

A rehearing is a full hearing which may be granted if either of the following applies:

- The original hearing record is inadequate for purposes of judicial review; or
- There is newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision.

A reconsideration is a paper review of the facts, law or legal arguments and any newly discovered evidence that existed at the time of the hearing. It may be granted when the original hearing record is adequate for purposes of judicial review and a rehearing is not necessary, but one of the parties is able to demonstrate that the Administrative Law Judge failed to accurately address all the relevant issues raised in the hearing request. Reconsiderations may be granted if requested for one of the following reasons:

- Misapplication of manual policy or law in the hearing decision, which led to the wrong decision;
- Typographical errors, mathematical error, or other obvious errors in the hearing decision that affect the substantial rights of the petitioner; or
- Failure of the Administrative Law Judge to address other relevant issues in the hearing decision.

A request for reconsideration which presents the same issues previously ruled on, either expressly or by reasonable implication, shall not be granted. Mich Admin Code, R 792.10135.

In the instant case, Petitioner's attorney argued that Department of Health and Human Services (Department) improperly denied Petitioner's June 2017 and August 2017 Medicaid (MA) applications. At the hearing, the Department contended that the attorney was not authorized to request a hearing on Petitioner's behalf, the January 10, 2018 hearing request was untimely with respect to the June 2017 application, and both applications were properly denied because Petitioner failed to submit requested verifications. In the Hearing Decision, the ALJ concluded that (1) Petitioner properly authorized the attorney to request the hearing on her behalf and represent her at the hearing; (2) the request for hearing concerning the July 26, 2017 denial of the June 2017 MA application was not timely submitted within 90 days of the denial; and (3) the Department properly denied the August 31, 2017 application for failure to submit requested verifications. The ALJ dismissed Petitioner's hearing request with respect to the July 2017 denial of MA benefits and affirmed the Department's October 12, 2017 denial with respect to the August 2017 application.

In the request for rehearing and/or reconsideration, Petitioner's counsel argues that after the hearing she became aware that Petitioner, who suffers from dementia, had neither a guardian nor power of attorney at the time of her applications who could have accessed the verifications requested by the Department and that the Department was aware that Petitioner's authorized representatives had been unable to access information concerning assets that the Department sought to verify. Petitioner's counsel presents a long, impassioned argument that the assets at issue were not accessible by Petitioner and, as such, not countable, and contends that the Department was obligated to affirmatively obtain information regarding an applicant's MA asset eligibility and could not under federal law request verification of assets from Petitioner unless that information was unavailable electronically. Counsel asserts that, under BAM 105, the

Department is required to assist clients, particularly those with disabilities, in obtaining verifications and, under BAM 600, a client is entitled to a hearing. Counsel further argues that that, in light of Petitioner's incapacity, the time for filing verifications should be tolled.

In this case, Petitioner was represented by employees of the nursing home in which she resided during the application process. At the hearing, Petitioner's counsel did not present any evidence that any of Petitioner's authorized representatives had requested assistance from the Department in obtaining verifications, that the Department had failed to provide requested assistance, or that the Department was aware of Petitioner's disability. The only evidence presented was that, with respect to both applications, the authorized representative had requested extensions to provide the verifications and the Department had granted the extensions. The Health Care Coverage Determination Notices showed that Petitioner and her nursing home were notified of the denial of the applications and the right to a hearing, and the authorized representative at the hearing did not dispute timely receipt of the Notices.

The hearing in this matter was conducted over the course of two days, and a review of the hearing recording shows that none of the arguments made in the request for rehearing and/or reconsideration were raised at the hearing. Petitioner's incapacity and her lack of a guardian or power of attorney were both facts in existence at the time of the hearing but not raised at the hearing. Further, counsel did not ask the Department at the hearing whether it had reviewed electronic sources before requesting verifications, and its conclusion that the Department had not done so is speculative. Because the information presented in the request was available at the time of hearing and arguments raised in the request could have been, but were not, pursued at the hearing, Petitioner has failed to show that there is newly discovered evidence or evidence that could not have been discovered at the time of the hearing, had a reasonable effort been made to do so, or that the original hearing record was inadequate for judicial review. Thus, Petitioner has failed to establish a basis for a rehearing.

The legal arguments raised in the request for rehearing and/or reconsideration are not based on facts in evidence at the hearing. Thus, Petitioner's arguments fail to establish that the ALJ misapplied manual policy or law in the Hearing Decision; committed typographical, mathematical, or other obvious errors in the Hearing Decision that affected Petitioner's substantial rights; or failed to address other relevant issues in the Hearing Decision. Therefore, Petitioner has not established a basis for reconsideration.

Accordingly, the request for rehearing and/or reconsideration is DENIED.

IT IS SO ORDERED.

AE/tm



Alice C. Elkin
Supervising Administrative Law Judge
for Farah Hanley, Acting 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 Administrative Hearing System.

DHHS

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Counsel for Respondent

[REDACTED]
Assistant Attorney General
Michigan Department of Attorney General
AG-HEFS-MAHS

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Counsel for Petitioner

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