



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: February 8, 2019
MAHS Docket No.: 18-009120-RECON
Agency No.: [REDACTED]
Petitioner: [REDACTED]

SUPERVISING ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

**ORDER IN RESPONSE TO REQUEST
FOR REHEARING AND/OR RECONSIDERATION**

Petitioner Laura Hadley has requested a rehearing and/or reconsideration in the above-captioned matter. On November 7, 2018, Administrative Law Judge (ALJ) [REDACTED] held a hearing in this matter to address [REDACTED] concerns that the Department of Health and Human Services (Department) had improperly calculated her Food Assistance Program (FAP) benefits and had improperly determined her Medicaid (MA) and Medicare Savings Program (MSP) eligibility. On November 15, 2018, ALJ [REDACTED] issued a Hearing Decision in the above-captioned matter finding that the Department had (1) properly calculated [REDACTED] FAP benefits and that, because [REDACTED] had not submitted medical expenses, she was not eligible for an increase in the FAP amount, (2) properly concluded that [REDACTED] was eligible for MA subject to a monthly deductible and was not income-eligible for full-coverage MA, and (3) properly closed [REDACTED] MSP case for excess income. ALJ [REDACTED] concluded that [REDACTED] argument that she was entitled to a 5% disregard in the calculation of her income for determining her eligibility for FAP, MA, and MSP was misplaced because the 5% disregard was a consideration only for cases involving Modified Adjusted Gross Income (MAGI)-related MA cases, which Ms. Hadley, because of her receipt of Medicare, was ineligible to receive.

On January 3, 2019, the Michigan Administrative Hearing System (MAHS) received [REDACTED] request for rehearing of the matters addressed in November 7, 2018 hearing and November 15, 2018 hearing decision. This request was supplemented with a fax from [REDACTED] received by MAHS on January 21, 2019. The undersigned, as the supervisor for ALJ [REDACTED] has reviewed the file, the hearing recording, and the hearing decision in this matter to address the concerns expressed in [REDACTED] requests, including the underlying complaint that [REDACTED] was denied a fair hearing.

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.

In the fax received January 21, 2019, [REDACTED] argues that there was a misapplication of policy and law and mathematical error in determining her monthly income. Citing the statement in the Department's Bridges Eligibility Manual (BEM) 503 (October 2018), p. 29, that the cost-of-living (COLA) increase in Retirement Survivors and Disability income (RSDI) be disregarded for January, February and March, she contends that her income should be calculated by averaging the reduced RSDI for January, February and March with the gross monthly RSDI over the course of the year. However, this argument ignores the remaining statement in policy:

Federal law requires the [COLA] increase received in January be disregarded for these three months [January, February and March]. *For all other months countable RSDI is the gross amount for the month being tested. Id.* (emphasis added.) [BEM 503, p. 29.]

██████████ does not dispute that her monthly gross RSDI for April 2018 ongoing was \$1391, the figure relied upon in the decision. Therefore, under BEM 503, ██████████ gross countable RSDI for April 2018 ongoing is \$1391, and ██████████ has failed to establish a misapplication of law or policy or mathematical error. As a review of the decision does not show any other misapplication of manual policy or law; typographical, mathematical, or other obvious error; or failure of the administrative law judge to address any relevant issues raised at the hearing, there is no basis for reconsideration of the November 15, 2018 hearing decision.

In her appeal requests, ██████████ also seeks a rehearing because she contends that her disability accommodation was not provided, that she was not given adequate opportunity to present her case, and she should have been allowed to present her case first, before the Department.

In her hearing request related to this matter, ██████████ clearly requested a disability accommodation:

I need a little extra time to clarify statements being made, document evidence, et. I am emotionally disabled [and] need to introduce your manual reference documents: RFT 242, 246, 250, 255 [and] 260. BEM 173, in my defense, as well.

To accommodate ██████████ concerns and at her request, the ALJ held the hearing in person. A review of the hearing recording shows that ALJ McLemore spent one hour, 17 minutes on the record to address ██████████ benefit cases, with the final 24 minutes of the hearing devoted to ██████████ questions to the Department and presentation of her case in response to the Department's. Although ██████████ contends that she should have been granted the opportunity to present her case first, ALJ ██████████ explained to ██████████ at the beginning of the hearing that the Department would proceed first. Doing so would require the Department to satisfy its burden of going forward to explain the actions that it took in ██████████ benefit cases and the reasons for those actions and would provide some context for the ALJ to understand the actions being disputed.

In her appeal requests, ██████████ contends that ALJ ██████████ and the Department disregarded and ignored her. MAHS strives to provide fair hearings to all parties at a hearing. A review of the hearing recording in this case shows that, although ALJ ██████████ asked ██████████ not to interrupt the Department's witness during the Department's presentation, once the Department completed its presentation, she gave ██████████ a full opportunity to ask the Department representative any questions she had and to present her case and her evidence in support of her case. ██████████ spent 24 minutes asking questions and presenting her case. The documents she asked to have admitted into the record were admitted. At the beginning of the hearing when ALJ ██████████ explained the procedure, ██████████ indicated that she did not understand a statement. ALJ ██████████ restated her explanation, and ██████████ consented when

asked if she understood. At no other time on the record did [REDACTED] indicate that she needed the ALJ or the Department to slow down, that she needed a moment to collect her thoughts, or that she was medically incapable of continuing or participating in the hearing, as alleged in her rehearing request. Although [REDACTED] contends that she had previously been approved for full-coverage MA and MSP and the maximum monthly FAP benefits and argues that the Department maliciously targeted her and reduced her benefits, the hearing properly focused on whether the Department's actions at the time the hearing was requested were proper based on the circumstances *at that time*, irrespective of any previous actions.

In sum, a complete review of this matter shows that [REDACTED] contention that she was denied reasonable accommodations or a fair hearing or that she was subject to harassment and discrimination in the hearing is without merit. ALJ [REDACTED] was patient and thorough in the hearing and gave both parties a full opportunity to present their cases and to admit documents into evidence. The decision is likewise thorough and addresses the issues raised by [REDACTED] regarding her FAP, MA, and MSP eligibility.

Because [REDACTED] has failed to establish a basis for rehearing and/or reconsideration, her request is denied.

IT IS SO ORDERED.

AE/tm



Alice C. Elkin
Supervising Administrative Law Judge
for Robert Gordon, 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]

Petitioner

[REDACTED]
[REDACTED]
[REDACTED]
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