



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

ORLENE HAWKS
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]
Date Mailed: April 26, 2019
MOAHR Docket No.: 19-002966
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

**ORDER OF DISMISSAL
FOR LACK OF JURISDICTION**

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and MCL 400.37, and 7 CFR 273.15 to 273.18, 42 CFR 431.200 to 431.250, 42 CFR 438.400 to 438.424, 45 CFR 99.1 to 99.33, and 45 CFR 205.10; and Mich Admin Code, R 792.11002. After due notice, a telephone hearing was held via 3-way telephone conference on April 22, 2019, from Detroit, Michigan. The Department of Health and Human Services (Department) was represented by [REDACTED] Recoupment Specialist, and [REDACTED], Hearing Coordinator from the Department's Wayne/Grand River Warren local office. [REDACTED], Petitioner's mother and authorized hearing representative (AHR), appeared at the local office and represented Petitioner.

The Department requested that Petitioner's hearing request be dismissed because the request was untimely and because the matter for which a hearing had been requested had already been heard by an administrative law judge.

Here, Administrative Law Judge (ALJ) [REDACTED] issued a hearing decision on October 10, 2018 finding that Respondent had committed an intentional program violation (IPV) of FAP when he failed to disclose his drug-related felony convictions and, as a result, received \$1,164 in FAP benefits that he was ineligible to receive (Exhibit C). Following the decision, the Department sent Petitioner an October 12, 2018 Intentional Program Violation Client Notice notifying him that he was disqualified from the Food Assistance Program for 12 months and that he was responsible for repayment of \$1,164 in overissued FAP benefits (Exhibit B).

A household aggrieved by a Department is eligible for a hearing to dispute the action, but the request for hearing must have been made within 90 days of the action taken by the agency. 7 CFR 273.15(a), (g) and (h). See also Department of Health and Human Services Bridges Administrative Manual (BAM) 600 (October 2018), p. 6. Petitioner did not request a hearing to dispute the October 12, 2018 Intentional Program Violation

Client Notice until March 14, 2019 (Exhibit A). Because more than 90 days had lapsed since the Department had sent Petitioner the Notice, his hearing request was untimely.

Further, if Petitioner disputed the conclusions in the Hearing Decision that he be disqualified from the FAP program for one year and repay the Department the \$1,164 in overissued FAP benefits, he was required to either appeal the decision to the circuit court or seek rehearing or reconsideration in accordance with the administrative hearing rules of the Michigan Administrative Hearing System (now Michigan Office of Administrative Hearings and Rules (MOAHR)). Mich Admin Code, R 792.1015 and 792.1017. Petitioner was barred by res judicata from requesting another hearing to dispute the matters already addressed in the October 10, 2018 hearing decision. *Estes v Titus*, 481 Mich 573, 585; 751 NW2d 493 (2008).

At the hearing, the AHR contended that Petitioner did not receive the Intentional Program Violation Client Notice or the IPV hearing decision. The evidence showed that the Notice had been sent to Petitioner's address of record, which was also the AHR's address. The Department testified that it had not received any mail returned from the post office indicating that Notice was undeliverable. Similarly, the records of the Michigan Office of Administrative Hearings and Rules (MOAHR) showed that the hearing decision was sent to the same address and was not returned to MOAHR as undeliverable. Further, the AHR admitted that she did not open Petitioner's mail and Petitioner was not present to provide first-hand testimony concerning his nonreceipt of any of the documents. Under the circumstances presented, the AHR has failed to rebut the presumption that the mail was properly sent and received. *Goodyear v City of Roseville*, 468 Mich 944; 664 NW2d 751 (2003).

Because Petitioner's hearing request was untimely and Petitioner cannot request a new hearing on the matters addressed by the ALJ in the October 10, 2018 hearing decision, Petitioner's hearing request is **DISMISSED** for lack of jurisdiction.

IT IS SO ORDERED.

AE/tm



Alice C. Elkin
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 Office of Administrative Hearings and Rules.

DHHS

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

DHHS Department Rep.

MDHHS-Recoupment
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Petitioner

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Authorized Hearing Rep.

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[REDACTED]

cc: FAP: M. Holden; D. Sweeney
AP Specialist-Wayne County