



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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

Date Mailed: September 18, 2019
MOAHR Docket No.: 19-008308
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Jacquelyn A. McClinton

ORDER DENYING RESPONDENT'S MOTION TO QUASH SUBPOENAS

Following Petitioner's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 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. On July 24, 2019, Respondent, Department of Health and Human Services (Department), issued a Health Care Coverage Determination Notice which informed Petitioner, [REDACTED] that he was ineligible for Medical Assistance (MA) program benefits. On July 30, 2019, Petitioner's counsel submitted a request for hearing disputing the Department's decision. On September 15, 2019, a Notice of Hearing was issued to the parties, scheduling the hearing for Wednesday, September 18, 2019.

On September 10, 2019, Petitioner's counsel sent a written request to the hearing office requesting the issuance of a subpoena for the testimony of [REDACTED] and [REDACTED]. On September 12, 2019, the undersigned issued the requested subpoenas. On the September 12, 2019, Respondent submitted its Motion to Quash Subpoenas.

The merits of Respondent's Motion are addressed below.

MCR 2.302(C) states as follow:

(C) Protective Orders. On motion by a party or by the person from whom discovery is sought, and on reasonable notice and for good cause shown, the court in which the action is pending may issue any order that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following orders:

(1) that the discovery not be had;

- (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place;
- (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;
- (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;
- (5) that discovery be conducted with no one present except persons designated by the court;
- (6) that a deposition, after being sealed, be opened only by order of the court;
- (7) that a deposition shall be taken only for the purpose of discovery and shall not be admissible in evidence except for the purpose of impeachment;
- (8) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way;
- (9) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

If the motion for a protective order is denied in whole or in part, the court may, on terms and conditions as are just, order that a party or person provide or permit discovery. The provisions of MCR 2.313(A)(5) apply to the award of expenses incurred in relation to the motion.

The pertinent Administrative Hearing Rules state as follows:

R 792.10253 Subpoenas. Rule 253.

- (1) On written request of a party to a contested case, the tribunal, through the clerk, shall, as provided by section 36 of the tax tribunal act, MCL 205.736, issue subpoenas for the attendance and testimony of witnesses and, if appropriate, the production of evidence at hearing or deposition, including, but not limited to, books, records, correspondence, and documents in their possession or under their control.
- (2) A party may serve a subpoena by mailing or delivery as provided by rule 2.105 of the Michigan court rules. However, a party may not serve a subpoena less than 3 business days before a scheduled hearing, unless otherwise provided by the tribunal.

- (3) Proceedings to enforce a subpoena may be commenced in the circuit court for the county in which the hearing is held.

R 792.10424 Subpoenas; orders to attend. Rule 424.

- (1) At any time in a proceeding, a commissioner or the presiding officer may issue a subpoena or order for a party or witness to attend and testify orally on a date and time certain until excused by the presiding officer and to produce specified notes, records, documents, photographs, or other tangible things.
- (2) A subpoena signed by an attorney of record or the secretary or a commissioner shall have the force and effect of a subpoena signed by the commission.
- (3) Except as otherwise provided in this rule and R 792.10425, the provisions of the court rules or statutes governing subpoenas in civil actions in circuit court apply.

R 792.10425 Subpoenas; service; failure to comply with subpoenas. Rule 425.

A subpoena shall be served in the manner prescribed by statute or court rule for subpoenas in civil actions in circuit court. It may be served at any place within the state. If a person fails to comply with a subpoena, or fails to attend or refuses to be sworn or testify, the presiding officer may stay further proceedings until the subpoena is obeyed. If the person who fails to obey the subpoena is a party to the proceeding or an officer, member, or employee of a party, the presiding officer may do any of the following:

- (a) Strike all or part of any pleading of that party.
- (b) Refuse to allow that party to support or oppose designated claims and defenses.
- (c) Delay the proceeding or part of the proceeding.
- (d) Take such further action as is appropriate under the circumstances.

Through its Motion, Respondent indicated that the subpoenas seek duplicative and cumulative information. Respondents also state that the witnesses' place of employment is Lansing, Michigan; and there is no reason to require either witness to travel to Traverse City, Michigan, to appear at the hearing.

In requesting the subpoenas, Petitioner's counsel stated that witnesses "appear" to be experts based upon the information contained on pages 136-137 of Respondent's hearing packet. The hearing packet received by the undersigned ends at page 134. As

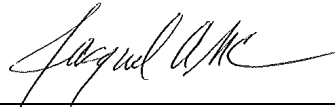
such, a determination cannot be made as to whether the testimony is duplicative and/or cumulative. Therefore, Respondent's Motion to Quash is hereby denied.

In its Motion, Respondent further requested that the witnesses be allowed to appear by telephone. Because there is the potential of duplicative and/or cumulative testimony and due to the travel distance involved, the requested witnesses will be allowed to appear by telephone. Accordingly, both witnesses are required to be available on the scheduled hearing date and time. If at the hearing, Respondent continues to assert that the testimony is duplicative and/or cumulative, it may raise that argument at the appropriate time during the hearing.

ORDER

NOW THEREFORE, IT IS ORDERED that Respondent's Motion to Quash Subpoenas is hereby **DENIED**.

JAM/jaf



Jacquelyn A. McClinton
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 (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

DHHS

(via electronic mail)

[REDACTED]

MDHHS-GrandTraverse-Hearings

Counsel for Respondent

(via electronic mail)

[REDACTED]

AG-HEFS-MOHR

Counsel for Respondent

(via electronic mail)

[REDACTED]

AG-HEFS-MOHR

Counsel for Petitioner

(via first class mail)

[REDACTED]

[REDACTED]

[REDACTED]

Petitioner

(via first class mail)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]