



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 12, 2019
MAHS Docket No.: 18-008443-RECON
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

SUPERVISING ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

ORDER DENYING REQUEST FOR REHEARING AND/OR RECONSIDERATION

Respondent [REDACTED] requests a rehearing of the matter addressed in the Hearing Decision issued by the assigned Administrative Law Judge (ALJ), [REDACTED] at the conclusion of the hearing conducted on October 25, 2018, and mailed on November 9, 2018, in the above-captioned matter. The undersigned Supervising Administrative Law Judge is addressing the request in ALJ [REDACTED] absence.

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 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. [BAM 600 (October 2018), p. 45.]

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.

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. [BAM 600 (October 2018), p. 44.]

Additionally, federal law provides that, where an individual found in a hearing decision to have committed an intentional program violation (IPV) concerning Food Assistance Program (FAP) benefits is later found to have good cause for not appearing at the hearing, the hearing decision will no longer remain valid and a new hearing may be conducted. 7 CFR 273.16(e)(4). Good cause for failure to appear includes, but is not limited to, situations where the individual can show he or she did not receive notice of the hearing. *Id.*

In this case, Respondent failed to appear at the October 25, 2018 hearing in the above-captioned matter, and the hearing was conducted in his absence. In the Hearing Decision issued November 9, 2018, ALJ ██████████ found that the Department of Health and Human Services (Department) had established by clear and convincing evidence that Respondent had committed an IPV of his FAP case by trafficking his FAP benefits. As a result, ALJ ██████████ concluded that Respondent should be disqualified from FAP for a 12-month period and that the Department was entitled to recoup and/or collect from Respondent the value of the trafficked FAP benefits.

On December 19, 2018, the Michigan Administrative Hearing System (MAHS) received Respondent's written request for rehearing, alleging he did not receive notice of the hearing. Where an individual alleges non-receipt of the hearing notice, the good cause explanation must be received within 30 days of the written notice of the hearing decision. *Id.* Where no proof of receipt is obtained, a timely showing of non-receipt of the notice constitutes good cause for not appearing at the hearing; each state agency must establish the circumstances in which non-receipt constitutes good cause for failure to appear and apply those circumstances consistently. 7 CFR 273(e)(3)(ii).

Because Respondent's request was received more than 30 days after the November 9, 2018 hearing decision was issued, Respondent's request for rehearing due to nonreceipt of notice is untimely under 7 CFR 273.16(e)(4). Further, although Respondent alleges that he was unable to receive his mail in a timely manner because of his homelessness, the Department testified at the hearing that that address to which notice was sent was the most current address for Respondent and Respondent has not presented anything with his rehearing request showing that he reported to the Department that he was homeless and provided a different mailing address. The MAHS

records do not show that the notice of hearing sent to Respondent notifying him of the October 25, 2018 hearing was returned to MAHS as undeliverable. Thus, Respondent has failed to timely establish good cause for not attending the October 25, 2018 hearing.

It is further noted that both Department policy and the Michigan Administrative Hearing Rules provide that a request for rehearing and/or reconsideration must be received by MAHS within 30 days of the date the hearing decision is mailed. Bridges Administrative Manual 600 (January 2018), p. 47; Mich Admin Code, R 792.11015(1). This request must be submitted directly to the hearing system pursuant to the instructions provided at the conclusion of the hearing decision. Mich Admin Code, R 792.11015(5). Here, the Hearing Decision provided on page 6, in pertinent part, that a request for rehearing or reconsideration must be received by MAHS within 30 days of the date the decision was issued. Thus, Respondent's hearing request was untimely under both federal law and the applicable State policy and rules.

Because Respondent's request for rehearing is untimely and fails to establish good cause, Respondent's request is hereby **DISMISSED**.

IT IS SO ORDERED.

AE/tm



Alice C. Elkin
Supervising Administrative Law Judge
for Nick Lyon, 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

OIG
PO Box 30062
Lansing, MI
48909-7562

Respondent

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

cc: IPV-Recoupment Mailbox

[REDACTED]