



RICK SNYDER
GOVERNOR

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

SHELLY EDGERTON
DIRECTOR

[REDACTED]
[REDACTED]
[REDACTED]

Date Mailed: May 24, 2018
MAHS Docket No.: 17-016144-RECON
Agency No.: [REDACTED]
Petitioner: [REDACTED]

SUPERVISING ADMINISTRATIVE LAW JUDGE: Alice C. Elkin

ORDER GRANTING REQUEST FOR REHEARING

This matter is before the undersigned Supervising Administrative Law Judge pursuant to the request for rehearing and/or reconsideration by Petitioner, [REDACTED] of the Hearing Decision issued in the above-captioned matter on February 27, 2018 by the assigned Administrative Law Judge (ALJ), [REDACTED] at the conclusion of the consolidated hearing for docket nos. 17-016144, 17-016148, 17-016173, and 17-016174 conducted on January 29, 2018 and February 26, 2018. On March 29, 2018, Petitioner submitted a request for reconsideration and/or rehearing of the Hearing Decision in docket no. 17-016173.

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 this case, the Department alleged that Petitioner had been overissued \$2,570 in Food Assistance Program (FAP) benefits from January 2014 through May 2014 because she failed to report her income from [REDACTED] and that income was not included in the calculation of her FAP benefits at the time of issuance. Relying on the FAP overissuance budgets for February 2014 and May 2014, ALJ [REDACTED] concluded that the Department's evidence showed that Petitioner's household's gross income exceeded the gross income limit for FAP eligibility for those months. As such, ALJ [REDACTED] found that the Department had established only a portion of the alleged \$2,570 FAP overissuance and limited the amount the Department could recoup and/or collect from Respondent to \$1,028.

In her request for rehearing and/or reconsideration, Petitioner disputes the FAP overissuance. Petitioner alleges that (1) the application at issue was submitted to the Department in August 2013 or October 2013, during which time she was not employed at [REDACTED] or [REDACTED], (2) contrary to the Department's evidence, she did not receive any income from [REDACTED] for May 2014, and therefore did not have excess gross income that month, and (3) the Department improperly excluded expenses she had reported from the overissuance budgets.

Petitioner's argument that the application at issue was submitted when she was not employed appears to be an attempt to argue that the Department improperly included income from [REDACTED] on the FAP overissuance budgets it presented to show the FAP benefits Petitioner would have been eligible to receive if her unreported income from [REDACTED] had been included in the calculation of her FAP benefits during the issuance months. However, with her request for rehearing and/or reconsideration, Petitioner submitted a printout from her online MiBridges account showing that there was also a January 9, 2014 application. The January 9, 2014 application was admitted into evidence at the hearing and shows that Petitioner reported employment at [REDACTED]. Therefore, the Department was properly budgeting prospective monthly income from [REDACTED] in the FAP budgets from January 2014 through May 2014. Because this income was not the basis of the Department's overissuance case and the monthly [REDACTED] income showing on the FAP overissuance budgets was based on prospected income determined at the time of application, the Department properly included the [REDACTED] income, as prospected, in the overissuance budgets. See BAM 715 (July 2014), p. 8.

Petitioner also argues that the income information for her employment with ██████ in the Work Number, the Department-accessible database containing employer-reported employment information, was inaccurate as to her May 2014 income. She explains that, because of the commission-based pay structure at ██████, she received an advance when she began employment but the advance was subtracted from her commissions at the end of the tax season and resulted in her not receiving any income from ██████ ██████ for May 2014. At the hearing, she testified that she had attempted to get income verification from ██████ to support her argument, but ██████ ██████ had not timely provided the information. With her reconsideration and/or rehearing request, Petitioner presents a printout from ██████ entitled "Employee Earnings History Report" dated after the continued hearing date that shows \$0 for the May 2, 2014 pay date in contrast to the \$1,901 showing for the same pay date in the Work Number. Because Petitioner has presented evidence that was not available at the hearing that could affect the outcome of the hearing, she has presented a basis supporting her request for rehearing.

Petitioner's final argument, that the Department excluded certain expenses in calculating her overissuance, was without merit where ALJ ██████ agreed that the Department improperly excluded Petitioner's housing expenses in calculating the overissuance budgets and where she based the determination of the overissuance on those months where the overissuance budgets showed that Petitioner's *gross* income exceeded the gross income limit test for FAP eligibility, a determination that does not take into account any of Petitioner's expenses. However, a review of the Hearing Decision shows that ALJ ██████ misapplied policy by applying the incorrect gross income limit applicable to Petitioner's case. ALJ ██████ used a gross income limit of \$2,987. However, because FAP applicants and recipients (excluding groups containing certain disqualified FAP members) are categorically eligible for FAP if they meet the asset test and if their gross income is at or below 200% of the federal poverty level, the gross income limit for FAP eligibility for Petitioner's five-person FAP group size was \$4,596. BEM 213 (July 2013), p. 1; RFT 250 (December 2013), p. 1. At rehearing, the ALJ is to apply the correct income limits for eligibility in determining Petitioner's FAP eligibility for the period January 2014 to June 2014.

Because Petitioner has presented newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision, her request for rehearing is **GRANTED** and the Hearing Decision issued on February 27, 2018 in docket no. 17-016144 is hereby VACATED. The case will be scheduled for rehearing and a Notice of Hearing will be mailed as soon as possible. The rehearing shall be conducted by ALJ ██████ who shall issue a Hearing Decision on Rehearing in the matter following the rehearing.

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

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

cc: FAP: [REDACTED]