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

GRETCHEN WHITMER
GOVERNOR

ORLENE HAWKS
DIRECTOR

FL

Date Mailed: January 14, 2020
MOAHR Docket No.: 19-008220-RECON
Agency No.:
Petitioner: OIG
Respondent:

ADMINISTRATIVE LAW JUDGE: Jacquelyn A. McClinton

ORDER DENYING REQUEST FOR REHEARING AND/OR RECONSIDERATION

This matter is before the undersigned Administrative Law Judge (ALJ) pursuant to the request for rehearing and/or reconsideration by the Department of Health and Human Service Office of Inspector General, Respondent (Department), of the Hearing Decision issued by the undersigned at the conclusion of the hearing conducted on August 25, 2019, and mailed on December 10, 2019, in the above-captioned matter.

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 or services at issue 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 a statutory basis for a rehearing of an administrative hearing.

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 (July 2019), p. 44.

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. BAM 600, p. 44. 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, pp. 44-45.

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.

In the instant case, the Department requested a hearing to establish that Respondent had committed an intentional program violation (IPV) of his Food Assistance Program (FAP) case and was overissued FAP benefits it was entitled to recover from Respondent. The undersigned issued a Hearing Decision in the above-captioned matter finding in part that the Department **had not** established by clear and convincing evidence that Respondent committed an IPV. The Hearing Decision also ordered the Department to delete the FAP overissuance and cease any recoupment action.
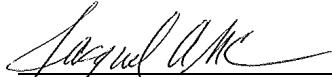
In the ▮▮▮▮▮▮▮▮ 2019 request for rehearing and/or reconsideration, the Department stated that it was submitting newly discovered evidence. The newly discovered evidence was a signed repay agreement executed by Respondent dated ▮▮▮▮▮▮▮, 2019. However, the hearing was held on ▮▮▮▮▮▮ 2019. As such, this evidence did not exist at the time of the hearing. Further, at the hearing, the Department was specifically asked if it had received a signed repay agreement and the Department indicated that it had not. It is unclear under what circumstances the Department accepted the repay agreement when it was present for the ▮▮▮▮▮▮ 2019 hearing and was aware that a decision would be issued specifically regarding the issue of repayment.

The Department does not allege that the original hearing record is inadequate for judicial review or that there is newly discovered evidence that existed at the time of the hearing. Therefore, it is not entitled to a rehearing. Furthermore, a full review of the Department's request fails to demonstrate that the undersigned misapplied manual policy or law in the Hearing Decision; committed typographical, mathematical, or other obvious errors in the Hearing Decision that affected Respondent's substantial rights; or failed to address other relevant issues in the Hearing Decision. Therefore, the Department has not established a basis for reconsideration.

Accordingly, the request for rehearing and/or reconsideration is **DENIED**.

IT IS SO ORDERED.

JAM/tlf
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

Via Email:

MDHHS-Wayne-49-Hearings
OIG Hearing Decisions
Recoupment
MOAHR

Respondent – Via First-Class Mail:

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