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MI [redacted]

Date Mailed: February 26, 2020
MOAHR Docket No.: 19-011901-RECON
Agency No.: [redacted]
Petitioner: [redacted]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

ORDER DENYING REQUEST FOR REHEARING/RECONSIDERATION

This matter is before the undersigned administrative law judge (ALJ) pursuant to a request for rehearing/reconsideration received by the Michigan Office of Administrative Hearings and Rules (MOAHR) on [redacted] 2020. The Michigan Department of Health and Human Services (MDHHS) submitted the request to dispute a Hearing Decision dated [redacted] 2019, stemming from an administrative hearing conducted on [redacted] 2019.

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 ALJ to address other relevant issues in the hearing decision.

Some background may be helpful to understanding the analysis. State Emergency Relief (SER) is a program to resolve client emergencies. For shut-off threats to energy services, SER can pay the amount of the bill that will preserve energy service for 30 days. Emergency Relief Manual (ERM) 302 (October 2018) p. 3. This amount is colloquially referred to as the shut-off amount. The shut-off amount is typically the client's past-due balance. The past-due balance is the client's account balance from the previous billing cycle. Thus, the amount of an energy bill in threat of shut-off includes a past-due amount (i.e. shut-off amount), and an amount for usage from the most recent billing cycle.

In the disputed case, Petitioner had a shut-off threat to her energy services. MDHHS approved Petitioner for an SER award of [redacted], conditional upon payment of [redacted] by Petitioner. After receiving notice of the conditional SER approval, Petitioner paid [redacted] and True North, a third-party agency (TPA), paid [redacted] towards Petitioner's energy bill. In response to the combined payments of [redacted] MDHHS reduced Petitioner's SER award to [redacted]. MDHHS first applied the [redacted] combined payments to Petitioner's copayment; MDHHS then reduced the SER by the amount leftover. Notably, MDHHS did not apply any portion of Petitioner's or True North's payments to the portion of Petitioner's bill not in shut-off status.

In a Hearing Decision dated [redacted] 2019, it was found that MDHHS erred by not applying any of Petitioner's or True North's payments to the portion of Petitioner's energy bill which was not part of the shut-off threat. The Decision found that Petitioner had an energy account balance of [redacted] after the [redacted] in payments posted to Petitioner's energy account. Thus, MDHHS was ordered to issue SER payment of [redacted] so that Petitioner would achieve a [redacted] balance following SER payment.

In its request for reconsideration, MDHHS cited policy that SER payments cannot be made for late charges. ERM 301 (March 2019) p. 6. MDHHS' citation implies that the disputed decision authorized SER payment for late charges; it did not. An administrative order that MDHHS apply Petitioner's and True North's payments to Petitioner's energy bill balance does not require MDHHS to pay for any late charges on Petitioner's energy account balance. Perhaps Petitioner and/or True North paid for late charges, however, MDHHS did not claim that clients or TPAs cannot pay for late charges on an energy bill.

In its request for reconsideration, MDHHS also contended that Petitioner's and True North's combined payment "did not result in a $0 account balance". Thus, MDHHS contended, none of the payment may be applied to the portion of Petitioner's bill not in shut-off threat.

"[SER payment] is not reduced when another agency is paying the client's current balance or arrearages, in addition to the copay, as long as the additional payment results in a zero-account balance." ERM 103 (March 2019) p. 4. For example:

> A client has an account balance of $1150 and a shut off notice for $900. MDHHS energy cap is $850 therefore the client copay is the $50 over cap amount. A community agency is willing to pay the client copay amount and $250 to get the bill current for a total payment of $300. The MDHHS payment of $850 would not be reduced.
>
> If the agency had paid [only] $100 toward the need the… [SER payment] would be reduced since the extra contribution was not enough to bring the total account balance to zero. *Id*.

The above example makes clear that under-payment of the amount of a client's balance not in shut-off threat results in reduction of the SER award by the total amount of underpayment. Petitioner's and True North's payment was not an under-payment because the payments exceeded the combined amount of copayment and Petitioner's non-shut-off balance. Thus, the payment should be applied to a client's copayment, then to a client's non-shut-off balance, and then to reduce the SER award.

MDHHS seems to contend that overpayment of the amount of balance not in shut-off threat also results in a total reduction of the SER award. MDHHS' apparent contention is not supported by its policy.

A full review of MDHHS' request fails to demonstrate that the undersigned misapplied manual policy or law; committed typographical, mathematical, or other obvious errors in the Hearing Decision that affected MDHHS' substantial rights; or failed to address other relevant issues in the Hearing Decision. Therefore, MDHHS has not established a basis for reconsideration. MDHHS has also not established a basis for rehearing. Accordingly, MDHHS' request for rehearing and/or reconsideration dated [redacted] 2020, is **DENIED**.

CG/tlf

Christian Gardocki
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 Administrative Hearings and Rules.

Via Email:

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