



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
MI [REDACTED]

Date Mailed: October 7, 2020
MOAHR Docket No.: 19-010365-RECON
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Lynn M. Ferris

**ORDER GRANTING REQUEST FOR REHEARING
AND VACATING HEARING DECISION**

**ORDER SCHEDULING PREHEARING CONFERENCE
AND
NOTICE OF HEARING**

This matter is before the undersigned Administrative Law Judge (ALJ) pursuant to the request for rehearing and/or reconsideration by Petitioner Tiffany Coates of the Hearing Decision issued by the undersigned at the conclusion of the hearing conducted on [REDACTED] 2020, and mailed on [REDACTED] 2020, 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 January 2020, 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, p. 44.]

In the instant case, the undersigned issued a Hearing Decision in the above-captioned matter finding that the Petitioner received an overissuance of Food Assistance benefits in the amount of ██████████ for the period ██████████ 2015 through ██████████ 2018 due to client error. At the time of the hearing, the Petitioner was also involved in a criminal matter brought by the ██████████ County Prosecutor regarding alleged welfare fraud and involving the same allegations regarding the Petitioner's receipt of an overissuance of Food Assistance Benefits in the amount of ██████████. Unfortunately, the undersigned was not aware of the pendency of the welfare fraud case and the prior two Orders of Adjournment issued by Administrative Law Judge John Markey. ALJ Markey issued two adjournment orders, ██████████ 2019 and ██████████ 2020 adjourning the debt collection matter due to the Department's reluctance to proceed because of the pending criminal proceedings. In granting the adjournment, ALJ Markey noted that "If Petitioner is found responsible for the full amount of the alleged FAP overissuance in the criminal proceedings, Department policy directs the Department to implement the court's decision." ¹ BAM 720 (October 2017), p. 14.

On ██████████ 2020 a Notice of Hearing was sent to the parties for a rescheduled hearing on ██████████ 2020 which was adjourned by ALJ Markey due to the fact that the criminal proceedings involving the Petitioner were still pending and Petitioner's attorney filed an appearance and the Department requested an adjournment to retain an attorney, an assistant attorney general from the Attorney General's Office. The case was adjourned for 90 days and the hearing was to be rescheduled.

On ██████████ 2020 a Notice of Hearing was issued and a hearing was scheduled for ██████████ 2020. The hearing was held on ██████████ 2020 and Petitioner did not appear. A reference to the criminal matter was made during the hearing, but the Department did not seek an adjournment and did not further advise the undersigned that it had previously sought an adjournment due to the potential conflict due to the fact that both matters concerned the overissuance which was the subject of the Hearing Decision issued by the undersigned dated ██████████ 2020 and which is the subject of the Petitioner's current pending criminal matter. The AAG informed the undersigned she was unable to reach the Petitioner or her counsel and the hearing was held without any discussion regarding the effect of BAM 720 and potential conflict of the ██████████ 2020 administrative Hearing Decision with the outcome of the pending criminal matter.

In her request for a rehearing/reconsideration dated ██████████ 2020, Petitioner Coates argues that when the earlier ██████████ 2020 hearing was rescheduled, the

Department specifically sought to adjourn the matter until the criminal proceedings were concluded and thus she assumed that when the matter was adjourned that no hearing would be scheduled until such time as the pending criminal matter was adjudicated or resolved. In addition, the Petitioner alleged that she had moved from her prior address and had filed a change of address but a post office error had delayed her mail causing her to receive the [REDACTED] 2020 Hearing Decision after the hearing was held. Petitioner also asserts that the overissuance should also have been calculated by the Department based upon [REDACTED] tax returns, which the Department never requested. Petitioner asserts [REDACTED] bank deposits should not have been used to determine the actual business expenses. Given the pendency of the criminal proceedings at the time of the [REDACTED] 2020 hearing, and the issuance of the [REDACTED] 2020 Hearing Decision, the matter should have been adjourned again as the holding an administrative hearing before the outcome of the criminal proceedings could cause a situation of confusion due to conflicting outcomes in the administrative and criminal matter and potential lack of finality of the hearing decisions due to the requirements of BAM 720 referenced above and in footnote ¹ below.

Because Petitioner has presented newly discovered evidence that existed at the time of the original hearing but was unavailable at the time and this evidence could affect the outcome of the original hearing decision, and the undersigned not being fully informed of the likelihood of a potential conflict of the Debt Collection Hearing Decision conflicting with the outcome of the criminal proceeding, Petitioner has shown sufficient grounds to support the granting of the request for rehearing.

Accordingly, Petitioner's request for rehearing is **GRANTED** and the Hearing Decision issued on [REDACTED] 2020 is hereby **VACATED**.

It is further ORDERED that this matter is hereby is scheduled for a **Telephone Prehearing Conference** at which time the status of the criminal matter, pertinent issues relative to rehearing of the debt collection matter and the future scheduling of the rehearing will be addressed by the undersigned. If a party does not participate in the telephone prehearing conference, it will be held in the party's absence and an order following telephone prehearing conference will be issued. Should any party or their counsel need to contact the undersigned, they are to do so by contacting Ms. Tammy Feggan, Secretary Supervisor, at FegganT@michigan.gov or at (313) 378-8692 and shall advise the opposing party or their counsel about their inquiry.

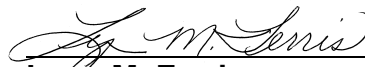
¹ If a court orders less than the full amount of overissuance, but a client is still responsible for an Intentional Program Violation, Department policy allows for pursuit of the difference at an administrative hearing. BAM 720 (October 2017), p. 14.

The Prehearing Conference ordered herein shall be conducted by **Telephone Conference** and the parties and their attorneys are directed to call in at the appointed date and time and conference phone number set forth below:

DATE: Wednesday, October 14, 2020
Time: 1:30pm - 2:30pm
Conference Line phone: 1-877-820-7831
Pass Code: 221262

IT IS SO ORDERED.

LMF



Lynn M. Ferris
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-Kent-Hearings
AG-HEFS-MAHS – Walker
MDHHS-Recoupment
MOAHR

Petitioner – Via First-Class Mail:

[REDACTED]
MI [REDACTED]