



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: January 22, 2021
MOAHR Docket No.: 20-004887-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 submitted by Petitioner to the Michigan Office of Administrative Hearings and Rules (MOAHR) on [REDACTED] 2020. Petitioner's request was in response to a Hearing Decision issued by MOAHR from an administrative hearing conducted on [REDACTED] 2020.

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.

In a Hearing Decision dated [REDACTED] 2020, the undersigned affirmed MDHHS's termination of Petitioner's Food Assistance Program (FAP) eligibility beginning [REDACTED] 2020 based on Petitioner's excess assets. The decision incorporated a finding that Petitioner owned a home with the address of [REDACTED] MI (hereinafter, "Home#2) which placed Petitioner above the asset limit.

One of the remedies sought by Petitioner in his rehearing/reconsideration request was an order precluding MDHHS from pursuing a recoupment claim for [REDACTED] in FAP benefits issued to Petitioner. Petitioner requested a hearing on [REDACTED] 2020. On some unspecified later date, MDHHS sought recoupment of FAP benefits issued to Petitioner from before the termination beginning [REDACTED] 2020. During the original hearing, Petitioner verbally referenced the recoupment and was advised there was not administrative hearing jurisdiction to address the dispute because Petitioner's dispute occurred after he requested a hearing. The same advice holds for Petitioner disputing recoupment in a request for rehearing/reconsideration. As discussed during the original hearing, Petitioner's remedy is to separately request a hearing.

Concerning his dispute of the original hearing decision, Petitioner contended that the undersigned erred by finding that MDHHS met its burden that Petitioner owned Home#2. The evidence relied upon included an investigation report citing that a CLEAR report listed Petitioner as a former resident of Home#2. Additionally, the investigation report cited city tax documentation listing Petitioner as the owner along with a mailing address matching Petitioner's. Neither the CLEAR report nor the city tax document was presented as evidence. Petitioner contended that MDHHS's evidence was inadmissible hearsay. Under Michigan Rules of Evidence 801, documents cited in a report to establish a material fact should be barred by hearsay. The present case justifies an exception to applying strict hearsay rules.

Michigan Administrative Procedures Act Section 75 states that rules of evidence should be followed as far as practicable, but evidence may be admitted if commonly relied upon by reasonably prudent persons in the conduct of their affairs. The content of MDHHS's investigation report was accepted, not only because of the general reliability of MDHHS's report statements, but also Petitioner's testimony. Petitioner testified he was responsible for [REDACTED] in property taxes on Home#2. Petitioner also never denied ownership of Home#2 despite being asked if he was the owner; instead, Petitioner answered by deflecting to MDHHS's burden to establish his ownership. MDHHS testimony also noted Petitioner's evasive answers during the application process. On Petitioner's application dated [REDACTED] 2020, Petitioner reported ownership of a property but did not report an address for the home. MDHHS had to discover the address for Home#2 through its own investigation. Petitioner's evasive responses in the application process and during the hearing, an undisputed obligation for property taxes, and

MDHHS's investigation report was found, by a preponderance of the evidence, to establish that Petitioner owned Home#2.¹

Further support for Petitioner's ownership of Home#2 can be found in Petitioner's rehearing/reconsideration. Petitioner stated that Home#2 was scheduled to be lost to foreclosure one day after he first applied for FAP benefits on [REDACTED] 2020. Petitioner acknowledged that, "by a stroke of luck", the foreclosure was delayed due to the COVID-19 pandemic. Petitioner contended that the happenstance supports his position; however, the delay in foreclosure is further support that Home#2 belonged to Petitioner and that ownership had not changed as of the date that MDHHS determined Petitioner to have excess assets.

With his request for rehearing/reconsideration, Petitioner submitted documents purportedly supporting his claim that he does not own Home#2. Petitioner presented a warranty deed for Home#2 dated in 2000 to a person who was not Petitioner. The document is not compelling evidence given there was no evidence that it was the most recent deed concerning Home#2 and the 20-year time lapse since the deed was executed.

Petitioner also contended that the undersigned erred in finding that the value of Home#2 exceeded MDHHS's asset limit. Petitioner's rehearing/reconsideration request noted that Petitioner testified that the value of Home#2 was less than [REDACTED]. MDHHS's evidence included citing the value of Home#2 based on an estimate from realtor.com and Petitioner's failure to respond to a Verification Checklist requesting information of Home#2. In finding that MDHHS did not err in determining Petitioner's equity stake in Home#2, it was noted that Petitioner submitted two applications to MDHHS without acknowledging ownership of a second home; Petitioner's obstinate refusal continued through his request for rehearing. Also, MDHHS sent Petitioner a Verification Checklist (VCL) requesting information about the second home. The VCL was a proper method for requesting verification of Petitioner's home's equity value. In response to the VCL, Petitioner failed to send documentation of his home's equity. Petitioner's refusal to acknowledge ownership of the home is consistent with failing to submit documents concerning the equity value of Home#2.

With his request for rehearing/reconsideration, Petitioner presented a 2009 letter from an appraiser assessing Home#2's value at [REDACTED]. Petitioner also presented county documentation listing [REDACTED] in due taxes for Home#2. The document were not considered as evidence because they were not submitted during the hearing and seemingly could have.


Given the totality of evidence, MDHHS's presentation of evidence was more persuasive than Petitioner's uncorroborated and nebulous testimony.² Petitioner contended that

¹ Petitioner's request stated it is not enough that MDHHS "probably" established that Petitioner owns the home. Based on a preponderance of evidence standard, it is enough.

rejecting his hearsay testimony concerning the value of Home#2 while accepting MDHHS's hearsay evidence was unjust. MDHHS's evidence at least cited reliable and potentially corroborating sources such as city tax documentation, a public website, and a CLEAR report.

A full review of Petitioner's 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 Petitioner's substantial rights; or failed to address other relevant issues in the Hearing Decision. Therefore, Petitioner has not established a basis for reconsideration. Petitioner has also not established a basis for rehearing. Petitioner's 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

² While the evidence at the hearing sufficiently supported MDHHS's conclusion that Petitioner owned Home#2, under MRE 201, judicial notice is taken of City Oak Park property tax records that additionally support the conclusion that Petitioner was the owner of Home#2.
<https://bsaonline.com/SiteSearch/SiteSearchDetails?SearchFocus=All+Records&SearchCategory=Address&SearchText=22000+stratford&uid=270&PageIndex=1&ReferenceKey=52-25-31-126-016&ReferenceType=0&SortBy=&SearchOrigin=0&RecordKeyDisplayString=52-25-31-126-016&RecordKey=52-25-31-126-016&RecordKeyType=0>

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.

Via Email:

MDHHS-Oakland-II-Hearings
MOAHR

Petitioner – Via First-Class Mail:

[REDACTED]
[REDACTED]
MI [REDACTED]