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GOVERNOR

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

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[REDACTED]
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Date Mailed:
MOAHR Docket No.: 21-002263
Agency No.: [REDACTED]
Petitioner: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Christian Gardocki

ORDER DENYING MOTION FOR RECONSIDERATION TO STAY PROCEEDINGS

This matter is before the undersigned administrative law judge pursuant to a request for reconsideration from the Michigan Department of Health and Human Services (MDHHS). The Michigan Office of Administrative Hearings and Rules received MDHHS's request on [REDACTED] 2021.

On [REDACTED] 2021, Petitioner's attorney requested a hearing to dispute a failure by MDHHS to process Petitioner's application for long-term care (LTC) Medical Assistance (MA) benefits. On [REDACTED] 2021, a prehearing conference was scheduled to determine whether the matter should be stayed pending an appeal by MDHHS to the Michigan Court of Appeals of a spousal support order issued by the Macomb County Circuit Court awarding various assets and income to Petitioner's spouse. On [REDACTED] 2021, the undersigned ordered that Petitioner's hearing request should be scheduled for hearing without further delay. The order denying MDHHS's request to stay proceedings is the subject of MDHHS's reconsideration request.

On [REDACTED] 2021, a hearing was held addressing Petitioner's hearing request and MDHHS's motion for reconsideration. Patrick Simasko appeared as Petitioner's legal counsel. Amy Badke, assistant to Petitioner's legal counsel, testified on behalf of Petitioner. Geraldine Brown, Assistant Attorney General, participated as legal counsel for the Michigan Department of Health and Human Services (MDHHS).

The 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 provides that a 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.

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.

The order denying MDHHS's request for a stay of proceedings partly factored that the parties stipulated that MDHHS's appeal to the Court of Appeals would take three years. In its reconsideration request, MDHHS denied such acknowledgement. MDHHS's brief estimated that the Court of Appeals could resolve MDHHS's appeal within three months following the completion of briefing. For purposes of this order, it will be accepted that MDHHS's appeal could be resolved in significantly less than three years.

Petitioner's attorney contended that further delay of the administrative proceeding is unnecessary and burdensome for Petitioner's family. If MDHHS's request to stay the proceedings was granted, Petitioner's attorney contended that Petitioner's family would face financial planning challenges due to the uncertainty of whether Petitioner's application for LTC-MA benefits would be approved. Petitioner's attorney also stated that the family is already burdened with persistent questions of payment from Petitioner's nursing home.

MDHHS responded that proceeding to hearing, given its appeal of the circuit court order, would be unjust. MDHHS essentially conceded Petitioner's LTC-MA eligibility if the disputed spousal support order were not reversed. However, MDHHS contended that the spousal support order was improperly issued and that a hearing on the merits with the Michigan Court of Appeals would likely result in the order being reversed. MDHHS emphasized that without a stay of the administrative proceedings, any benefits issued to Petitioner while the Court of Appeals matter is pending would not be recoupable if its appeal is ultimately successful. Additionally, MDHHS's brief emphasized that the undersigned has the authority under MCL 24.304 to stay proceedings "upon appropriate terms" and under Mich Admin Code R. 792.10103(c) to adjourn Petitioner's hearing request.

The authority under MCL 24.304(1) to stay enforcement of an MDHHS action applies to appeals of administrative hearing decisions to the circuit court, not to pending matters before the administrative tribunal. Also, on [REDACTED] 2021, the Court of Appeals denied MDHHS's motion requesting immediate consideration to stay the circuit court order. Given the still extended and unknown period for MDHHS's appeal of the spousal

support order to be heard on the merits by the Court of Appeals and the current validity of the spousal support order, a stay and/or adjournment is not warranted.

A full review of MDHHS's request fails to demonstrate that the undersigned misapplied manual policy or law; committed typographical, mathematical, or other obvious errors that affected MDHHS's substantial rights; or failed to address other relevant issues. Therefore, MDHHS has not established a basis for reconsideration. MDHHS's request for reconsideration of the [REDACTED] 2021 order denying a stay of proceedings is **DENIED**.

CG/tm



Christian Gardocki

Administrative Law Judge

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:

AG-HEFS-MAHS@michigan.gov – G. Brown
MDHHS-Macomb-12-Hearings
C. George
EQADHearings
MOAHR

Petitioner – Via USPS:

Casimir Zalewski
43533 Elizabeth St
Mount Clemens, MI 48043

Counsel for Petitioner – Via USPS:

[REDACTED]
[REDACTED]
[REDACTED], MI [REDACTED]