



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
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Date Mailed: February 2, 2022
MOAHR Docket No.: 21-003956-RECON
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Linda Jordan

ORDER DENYING REQUEST FOR REHEARING AND/OR RECONSIDERATION

On [REDACTED] 2021, the Michigan Office of Administrative Hearings and Rules (MOAHR) received from the Michigan Department of Health and Human Services (MDHHS), Office of Inspector General (OIG/Petitioner) a request for rehearing and/or reconsideration of the Hearing Decision issued on [REDACTED] 2021 by the undersigned Administrative Law Judge (ALJ) at the conclusion of the hearing conducted on [REDACTED] 2021 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 in the Bridges Administrative Manual (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 (March 2021), 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 presiding ALJ 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 ALJ to address other relevant issues in the hearing decision. BAM 600, p. 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 undersigned ALJ issued a decision in the above-captioned matter finding that Petitioner failed to present sufficient evidence that Respondent committed an intentional program violation (IPV) of the Food Assistance Program (FAP).

By way of context, Petitioner alleged that Respondent intentionally misrepresented her employment status on a State Emergency Relief (SER) application by reporting that she was only employed at one employer, when in fact she was working at two employers at the time. However, Respondent included both employers on the SER application, but one of the employers was listed under Respondent's daughter's name and the other was listed twice under Respondent's name. Based on the inconsistencies on the face of the document and the record as a whole, the ALJ concluded that MDHHS failed to prove by clear and convincing evidence that Respondent intended to make a misrepresentation regarding her circumstances.

Petitioner submitted a request for rehearing/reconsideration alleging that the undersigned ALJ made an error by advocating for the client, contrary to BAM 600. Petitioner argued that the ALJ acted as an advocate for the client in this case, because the client did not appear at the hearing and did not present evidence that she made a mistake on the application. BAM 600 provides that "the ALJ may not act as an advocate for either party" in the context of the admission of evidence. BAM 600 (██████ 2021), pp. 38-39. The SER Application submitted by Petitioner as evidence was admitted by the ALJ. The ALJ did not make any arguments on behalf of the client concerning why the evidence should not be admitted. Thus, the ALJ did not advocate for the client in the context of evidence admission.

Following the hearing, the ALJ reviewed Petitioner's evidence and considered whether it established that Respondent committed fraud by clear convincing evidence, which is the most demanding standard in civil cases. The role of an ALJ is to determine facts based solely on the evidence introduced at the hearing and draw conclusions of law. BAM 600, p. 39. By examining the documents that Petitioner presented and drawing a conclusion regarding whether the documents supported Petitioner's allegation, the undersigned ALJ was fulfilling her role. Because Petitioner did not provide any more compelling

evidence to show that Respondent acted intentionally, the ALJ found that it failed to satisfy its burden of showing that Respondent intentionally committed fraud for the purpose of obtaining more benefits than she was entitled to receive.

Petitioner did not allege that the original hearing record is inadequate for judicial review or that there is newly discovered evidence (or evidence that could not have been discovered at the time of the hearing had a reasonable effort been made to do so). Therefore, Petitioner has failed to establish a basis for a rehearing. Furthermore, a full review of Petitioner's request fails to demonstrate that the undersigned ALJ misapplied manual policy or law in the Hearing Decision, which led to the wrong result; 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. Petitioner's request for rehearing and/or reconsideration merely presents the same issues previously ruled on, and thus, the request shall not be granted.

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

IT IS SO ORDERED.

LJ/tm



Linda Jordan
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.

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