



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

[REDACTED]
CA [REDACTED]

Date Mailed: March 28, 2022
MOAHR Docket No.: 21-004734-RECON
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [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 Respondent to the Michigan Office of Administrative Hearings and Rules (MOAHR) on [REDACTED] 2022. Respondent's request was in response to a Hearing Decision mailed by MOAHR on [REDACTED] 2022, from an administrative hearing conducted on [REDACTED] 2022.

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.

The decision disputed by Respondent approved MDHHS's request to establish a Food Assistance Program (FAP)-related intentional program violation (IPV) disqualification period.¹ The basis of the IPV was Respondent's receipt of duplicate FAP benefits from May through September 2021.

In requesting a rehearing, Respondent noted her absence from the original hearing. Respondent claimed that she did not receive notice of the hearing. MOAHR records indicate a hearing notice sent to Respondent on [REDACTED] 2021.

The proper mailing and addressing of a letter creates a presumption of receipt. That presumption may be rebutted by evidence. *Stacey v Sankovich*, 19 Mich App 638 (1969); *Good v Detroit Automobile Inter-Insurance Exchange*, 67 Mich App 270 (1976).

Respondent's claim of not receiving a hearing notice is curious because she requested a rehearing only two weeks after the original decision was mailed. The hearing decision was mailed to the same address to where notice of the hearing was mailed.² If Respondent received the Hearing Decision, it is unclear why she would not have also received notice of the hearing.

Respondent seemed aware that a hearing would be scheduled because she claimed to have left multiple voicemails "months prior in [REDACTED]" (presumably, of 2021) asking about a hearing and receiving no return call. Respondent did not state who or what agency she called, or why she stopped calling. Respondent provided no corroboration for her claim of unreturned calls (e.g., phone logs) and MOAHR has no record of Respondent calling. Because Respondent was aware of a pending hearing, she presumably also received the hearing packet sent to her by MDHHS on [REDACTED] 2021.³ The hearing packet apparently received by Respondent was sent to the same address that notice of the hearing was sent.

Respondent also claimed that she believed the hearing would be held in [REDACTED] 2022 instead of [REDACTED] 2022. Respondent provided no basis for her belief. The claim is particularly curious as Respondent claimed that she received no calls about the hearing date.

In requesting a reconsideration, Respondent noted hardships she experienced during the established fraud period of [REDACTED] through [REDACTED] 2021. Respondent mentioned being transient, visiting her brother, a period of homelessness, and losing her wallet.

¹ The decision also found that MDHHS failed to establish a claim of \$1,786 for duplicate benefits due to a failure to establish that the claim was properly calculated.

² Respondent did report a change of address in her reconsideration/rehearing request. Respondent did not claim that the change adversely affected receiving notice of the hearing.

³ The hearing packet cover letter was presented as Exhibit A, p. 3 during the original hearing.

The hardships cited by Respondent are not relevant to excusing her absence from the hearing.

The evidence established that the notice of hearing was properly addressed and mailed to Respondent. Respondent's uncorroborated claims of not receiving notice of the hearing do not rebut the presumed receipt of hearing notice.

Respondent further claimed to have reported that she requested a closure of FAP benefits before receiving duplicate benefits from the Illinois.⁴ Respondent's claim should have been presented during the original hearing. Her failure to participate in the hearing precludes consideration of her claim.

A full review of Respondent'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 Respondent's substantial rights; or failed to address other relevant issues in the Hearing Decision. Therefore, Respondent has not established a basis for reconsideration. Respondent has also not established a basis for rehearing. Respondent's request for rehearing and/or reconsideration dated [REDACTED] 2022, is **DENIED**.

CG/tlf



Christian Gardocki
Administrative Law Judge

⁴ Respondent claims to have reported to MOAHR. Presumably, Respondent meant that she reported this to MDHHS.

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.

Email Recipients:

MDHHS-Kent-Hearings
OIG Hearing Decisions
Recoupment
L. Bengel
MOAHR

Respondent – via First-Class Mail:

[REDACTED]
[REDACTED]
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