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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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DIRECTOR

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Date Mailed: September 29, 2022
MOAHR Docket No.: 22-001638-RECON
Agency No.: [REDACTED]
Petitioner: OIG
Respondent: [REDACTED]

ADMINISTRATIVE LAW JUDGE: Linda Jordan

ORDER DENYING REQUESTS FOR RECONSIDERATION AND/OR REHEARING

On [REDACTED] 2022, the Michigan Office of Administrative Hearings and Rules (MOAHR) received from the Michigan Department of Health and Human Services (MDHHS/Department) Office of Inspector General (Petitioner OIG) a request for reconsideration and/or rehearing of the Hearing Decision issued on [REDACTED] 2022 by the undersigned Administrative Law Judge (ALJ) at the conclusion of the hearing conducted on [REDACTED] 2022 in the above-captioned matter. On [REDACTED] 2022, MOAHR also received from [REDACTED] (Respondent) a request for reconsideration and/or rehearing of the Hearing Decision issued on [REDACTED] 2022. This Order addresses both requests and concludes that neither party established a valid basis for reconsideration and/or rehearing.

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 present case, the undersigned ALJ issued a Hearing Decision on [REDACTED] 2022, which concluded that MDHHS did not established by clear and convincing evidence that Respondent committed an Intentional Program Violation (IPV) of the Food Assistance Program (FAP); Respondent was not subject to a 12-month disqualification from FAP; and Respondent did receive an overissuance (OI) of FAP benefits in the amount of [REDACTED]

On [REDACTED] 2022, MOAHR received a request for reconsideration and/or rehearing from Petitioner OIG, which alleged that a reconsideration of the [REDACTED] 2022 Hearing Decision was warranted based on (i) a misapplication of manual policy or law in the Hearing Decision, which led to the wrong conclusion and (ii) the failure of the ALJ to address all relevant issues raised in the hearing request. Petitioner OIG asserted that the undersigned ALJ reached the wrong result by denying its request to establish an IPV and denying its request to disqualify Respondent from receiving FAP benefits for a period of 12 months.

Regarding the first argument, OIG alleged that there was a misapplication of law or policy based on the undersigned ALJ's reliance on Department policy related to Michigan Department of Correction (MDOC) data matches. Pursuant to BAM 804 ([REDACTED] 2018), p. 1, MDHHS is required to conduct automated incarceration matches with MDOC on a monthly basis. The match runs for all individuals who are active for any program whose current living arrangement is not prison. *Id.* If a valid match is found, meaning there is a record of the person being in MDOC custody, then the interface will update the living arrangement of the individual for all programs and eligibility will be redetermined on cases where the client is active. *Id.* Accordingly, the undersigned ALJ concluded that MDHHS should have been aware of Respondent's incarceration at an earlier date based on the MDOC data matches and by not conducting the matches on a monthly basis, or by not acting on the information that it had, MDHHS was not following policy.

It its request, Petitioner OIG alleged that “[r]egardless of whether an MDOC match should have triggered an eligibility redetermination, the Respondent acknowledged that he was aware of his rights and responsibilities per BAM 105 and is required by law to and policy to report changes in residence to the MDHHS caseworker.” Rather than showing that there was a misapplication of law or policy, Petitioner OIG asserted the same argument regarding intent that it presented at the hearing. At the hearing, Respondent addressed the issue of intent and credibly testified that it was not his intention to withhold his incarceration status from MDHHS and stated that he attempted to contact MDHHS but was unable to because MDHHS does not accept collect calls. MDHHS did not present any additional evidence regarding Respondent’s intent.

Petitioner OIG did not present a misapplication of law or policy, but merely restated its argument that Respondent acted with the requisite intent to support an IPV. A request for reconsideration or rehearing that presents the same issues previously ruled upon will not be granted. Therefore, Petitioner OIG is not entitled to reconsideration and/or rehearing on this basis.

Regarding the second argument, Petitioner OIG alleged that “Respondent is also responsible for transfer of benefits to an unauthorized person as well as the failure to report changes in a timely manner therefore an IPV should occur.” Based on this statement, it appears that Petitioner OIG is alleging that the undersigned ALJ failed to address all relevant issues raised in the Request for Hearing. In its Request for Hearing, OIG Petitioner alleged that Respondent committed an IPV based on his failure to report his incarceration to MDHHS in a timely manner (Exhibit A, p. 1). The hearing summary also included a sentence related to FAP trafficking (Exhibit A, p. 1) (“The subject did knowingly use, transfer, acquire, alter, purchase, possess, present for redemption or transport food stamps or coupons or access devices other than authorized by the [F]ood [S]tamp [A]ct of 1977, 7 U.S.C. 2011 to 2036.”). The inclusion of the statutory language related to trafficking prompted the undersigned ALJ to ask Petitioner OIG at the hearing whether it was basing the IPV on a failure to report a change in residence or on trafficking. Petitioner OIG responded that it was basing the IPV on the failure to report. Therefore, the Hearing Decision did not address whether Respondent committed trafficking. Petitioner OIG has failed to establish that this is a valid reason for reconsideration and/or rehearing because it did not allege that Respondent committed trafficking at the hearing. Therefore, Petitioner OIG is not entitled to reconsideration and/or rehearing on this basis.

On [REDACTED] 2022, MOAHR received a request for reconsideration and/or rehearing from Respondent. Respondent alleged that the undersigned ALJ reached the wrong conclusion by determining that he received an overissuance (OI) of FAP benefits. In his request, Petitioner alleged that he should not be responsible for the OI because he was incarcerated at the time and did not spend the FAP benefits. He further argued that he should not be responsible for the OI because MDHHS did not follow policy by failing to conduct the MDOC data matches, and that he did his due diligence as a FAP recipient because he attempted to report his incarceration to MDHHS but was unable to do so. Respondent appeared at the hearing and had ample opportunity to testify and present

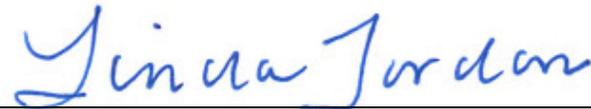
legal arguments. In his request for reconsideration and/or rehearing, Respondent failed to assert any new issues or evidence that was not considered in the Hearing Decision. Additionally, his arguments focus on his intent, which is irrelevant to the question of whether an OI occurred.

Neither Petitioner nor Respondent alleged that the original hearing record was inadequate for judicial review or that there was 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 and Respondent failed to establish a basis for a rehearing. Furthermore, Petitioner and Respondent failed to demonstrate that the undersigned ALJ misapplied manual policy or law in the Hearing Decision; 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, neither party has established a valid basis for reconsideration. Instead of articulating a basis for reconsideration and/or rehearing, the parties are generally challenging the Hearing Decision in an attempt to relitigate the case. Mere disagreement with the Hearing Decision does not warrant a reconsideration and/or rehearing of this matter.

Accordingly, Petitioner's request for reconsideration and/or rehearing is **DENIED** and Respondent's request for reconsideration and/or rehearing 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 Administrative Hearings and Rules.

