



GRETCHEN WHITMER
GOVERNOR

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

ORLENE HAWKS
DIRECTOR

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Date Mailed: February 28, 2023
MOAHR Docket No.: 22-001643-RECON2
Agency No.: ██████████
Petitioner: OIG
Respondent: ██████████

ADMINISTRATIVE LAW JUDGE: Danielle Nuccio

ORDER GRANTING REQUEST FOR REHEARING

On December 14, 2022, the Michigan Office of Administrative Hearings and Rules (MOAHR) received from Respondent ██████████ a request for rehearing and/or reconsideration of the Hearing Decision for Intentional Program Violation (Hearing Decision) issued on ██████████ 2022 by the undersigned administrative law judge (ALJ) at the conclusion of the hearing conducted on December 5, 2022 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 provisions articulated 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.

Additionally, federal law provides that, where an individual found in a hearing decision to have committed an intentional program violation (IPV) concerning Food Assistance Program (FAP) benefits is later found to have good cause for not appearing at the hearing, the hearing decision will no longer remain valid and a new hearing may be conducted. 7 CFR 273.16(e)(4). Good cause for failure to appear includes, but is not

limited to, situations where the individual can show he or she did not receive notice of the hearing. *Id.* Where an individual alleges non-receipt of the hearing notice, the good cause explanation must be received within 30 days of the written notice of the hearing decision. *Id.* Where no proof of receipt is obtained, a timely showing of non-receipt of the notice constitutes good cause for not appearing at the hearing; each state agency must establish the circumstances in which non-receipt constitutes good cause for failure to appear and apply those circumstances consistently. 7 CFR 273(e)(3)(ii). If the reason for not appearing is not related to receipt of the notice of the hearing, the individual has ten days from the date of the scheduled hearing to present good cause reasons for failure to appear. 7 CFR 273.16(e)(4).]

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 Administrative Law Judge to address other relevant issues in the hearing decision.

BAM 600, p. 44.

In the instant case, the undersigned issued a Hearing Decision in the above-captioned matter finding MDHHS established by clear and convincing evidence that Respondent committed an IPV and is subject to a 12-month disqualification from FAP. The undersigned ordered that Respondent be personally disqualified from FAP for a period of 12 months.

In Respondent's request for rehearing and/or reconsideration, Respondent asserted that he attempted to call in to the telephone hearing at the scheduled date and time but experienced issues connecting to the telephone hearing. It is found that Respondent has presented good cause for his failure to appear at the December 5, 2022 hearing.

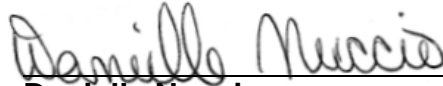
Because Respondent has presented good cause for failing to appear at the December 5, 2022 hearing regarding the alleged IPV, Respondent has shown sufficient grounds to grant the request for rehearing.

Accordingly, Respondent's request for rehearing is **GRANTED**, and the Hearing Decision issued on December 12, 2022 is hereby **VACATED**. The case will be scheduled for rehearing and a Notice of Hearing will be mailed as soon as possible. The

rehearing will be conducted by the undersigned Administrative Law Judge, who will issue a Hearing Decision on Rehearing in the matter following the rehearing.

IT IS SO ORDERED.

DN/tlf



Danielle Nuccio
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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Respondent

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