



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: December 14, 2022
MOAHR Docket No.: 22-002436-RECON
Agency No.: ██████████
Petitioner: OIG
Respondent: ██████████

ADMINISTRATIVE LAW JUDGE: Kevin Scully

ORDER DENYING REQUEST FOR REHEARING AND/OR RECONSIDERATION

Upon the request for a hearing by the Department of Health and Human Services (Department), this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9, and in accordance with Titles 7, 42 and 45 of the Code of Federal Regulation (CFR), particularly 7 CFR 273.16, and with Mich Admin Code, R 400.3130, and R 400.3178. On August 30, 2022, a Notice of Disqualification Hearing was mailed to Respondent's address of record, and it was not returned by the US Postal Service as undeliverable. A telephone hearing was held on October 4, 2022, from Lansing, Michigan. The Department was represented by Patrick Richard, Regulation Agent of the Office of Inspector General (OIG). Respondent did not appear at the hearing, and it was held in Respondent's absence pursuant to 7 CFR 273.16(e), Mich Admin Code R 400.3130(5), or Mich Admin Code R 400.3178(5).

On November 21, 2022, Respondent filed a timely request for rehearing and/or reconsideration of the Hearing Decision for Intentional Program Violation issued by Administrative Law Judge Kevin Scully following the hearing conducted on October 4, 2022, and the decision was mailed on November 1, 2022.

If a household member cannot be located or fails to appear at a disqualification hearing initiated by the Department without good cause, the hearing shall be conducted without the household member being represented. In the absence of evidence of nonreceipt of the hearing notice, the household member has 10 days from the date of the scheduled hearing to present reasons indicating a good cause for failure to appear. 7 CFR 273.16(e)(4).

Respondent requested a rehearing after missing the October 4, 2022, disqualification hearing after oversleeping due to medication she was taking. Respondent has failed to establish good cause for failing to appear for the October 4, 2022, disqualification hearing.

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 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. There is also a statutory basis provided in MCL 24.287 for a rehearing of an administrative hearing.

Subpart A of Part 10 of the Michigan Office of Administrative Hearing System (MOAHR) Hearing Rules provides in pertinent part:

Rule 1015.

(1) A party who has received an adverse hearing decision shall file a request for rehearing or reconsideration with the hearing system in writing within 30 days after the decision has been mailed.

(2) A rehearing is a full de novo hearing which may be granted when either of the following occurs:

(a) There is newly discovered evidence that existed at the time of the original hearing and that could affect the outcome of the original hearing decision.

(b) The original hearing record is inadequate for purposes of judicial review.

(3) If a rehearing is granted, the order granting rehearing shall vacate the hearing decision and order, and order that a de novo hearing be scheduled by the hearing system.

(4) A reconsideration is a paper review of the facts, law, and any new evidence or legal arguments and may be granted when the original hearing record is adequate for purposes of judicial review and a rehearing is not necessary, however, or more of the following exists:

(a) Misapplication of manual policy or law in the hearing decision, which led to the wrong conclusion.

(b) Typographical, mathematical, or other obvious error in the hearing decision that affects the substantial rights of the claimant or petitioner.

(c) The failure of the administrative law judge to address in the hearing decision relevant issues raised in the request for hearing.

(5) A request for rehearing or reconsideration must be submitted directly to the hearing system pursuant to the instructions provided at the conclusion of all hearing decision.

(6) The party requesting the rehearing or reconsideration must specify all reasons for the request.

(7) If reconsideration is granted, the decision may be modified without further proceedings.

If a rehearing is granted, the hearing shall be noticed and conducted in the same manner as an original hearing.

(8) A party is provided the opportunity for request for rehearing or reconsideration of the hearing decision of the administrative law judge. Recourse for subsequent review shall be to the appropriate court as identified at the end of the hearing decision.

Mich Admin Code, R 792.11015.

Clear and convincing evidence was presented at the October 4, 2022, hearing that Respondent used the Food Assistance Program (FAP) benefits that had been granted to a person outside of her household after the grantee died, and that this unauthorized use of those benefits fits the definition of FAP trafficking.

Respondent does not allege that there is newly discovered evidence that existed at the time of the original hearing and that could affect the outcome of the original hearing decision, or that the original hearing record is inadequate for purposes of judicial review.

Respondent's appeal fails to demonstrate or allege a misapplication of manual policy or law in the hearing decision, which led to the wrong conclusion; a typographical, mathematical, or other obvious error in the hearing decision that affects the substantial rights of the claimant or petitioner; or the failure of the administrative law judge to address in the hearing decision relevant issues raised in the request for hearing.

Therefore, Respondent has not established a basis for rehearing or reconsideration.

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

IT IS SO ORDERED.

KS/tlf



Kevin Scully
Administrative Law Judge
Michigan Office of
Administrative Hearings and Rules (MOAHR)

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 Administrative Hearing System.

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Respondent

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