



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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[REDACTED] MI [REDACTED]

Date Mailed: January 17, 2023  
MOAHR Docket Nos.: 22-004087, 22-005423,  
22-004925  
Agency No.: [REDACTED]  
Petitioner: [REDACTED]

**SUPERVISING ADMINISTRATIVE LAW JUDGE:** Marya A. Nelson-Davis

**ORDER DENYING PETITIONER'S REQUEST FOR RECUSAL**

On December 13, 2022, the Michigan Office of Administrative Hearings and Rules (MOAHR) received Petitioner's Motion to Disqualify Administrative Law Judge (ALJ) Kevin Scully "for demonstrated prejudice, lack of impartiality, unfairness, denial of due process." ALJ Scully denied Petitioner's motion for disqualification in his December 19, 2022 Order Granting Adjournment. On January 10, 2023, Petitioner filed a motion for "Chief ALJ review" of Petitioner's motion to disqualify ALJ Scully and cited Mich Admin Code, R 792.10106(6) as his basis for doing so.

Disqualification or recusal of an ALJ is addressed in Mich Admin Code, R 792.10106, which provides, in pertinent part:

- (2) An administrative law judge may be recused, or disqualified, from a case based on bias, prejudice, interest, or any other cause provided for in this rule.
- (3) An administrative law judge may be recused in any proceeding in which the impartiality of the administrative law judge might reasonably be questioned, including but not limited to, instances in which any of the following exist:
  - (a) The administrative law judge has a personal bias or prejudice concerning a party, a party's authorized representative, or a party's attorney.
  - (b) The administrative law judge has personal knowledge of disputed evidentiary facts concerning the proceeding.
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  - (e) The administrative law judge has been a material witness concerning the matter in controversy.

- (f) An administrative law judge shall voluntarily disclose to the parties any known conditions listed in subdivisions (a) to (e) of this subrule.

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- (6) If the challenged administrative denies the motion for disqualification, a party may move for the motion to be decided by a supervising administrative law judge.

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In accordance with R 106(6), the undersigned supervising ALJ has reviewed Petitioner's motion for review of ALJ Scully's order denying the motion for disqualification.

In his December 19, 2022 order, ALJ Scully denied Petitioner's subpoena requests after finding Petitioner failed to establish good cause that the witnesses and information for the subpoenas were relevant to the administrative hearing issue(s) before him. He also denied Petitioner's request that MDHHS provide him with a copy of his case file and other MDHHS documents after finding that Petitioner failed to establish good cause to compel MDHHS to provide or allow inspection of such documents along with finding that Petitioner's other requests were outside the scope of Petitioner's administrative hearing request and MOAHR's jurisdiction.

In his motion for the undersigned recusal, Petitioner argues, "ALJ Kevin Scully has: (1) DENIED Petitioner's Request for Witness Subpoenas, (2) DENIED Subpoenas Duces Tecum, and (3) everything (with the exception of Subpoena for [REDACTED]) Petitioner requested, and (4) ignoring that Petitioner went to JACKSON COUNTY DHS to "inspect" the Evidence/File, AND WAS REFUSED THREE (3) TIMES, wholly preventing Petitioner from presenting his Relevant, and Material defenses. Simply put, the Government ALJ Kevin Scully is NOT impartial and is not - and demonstrated He cannot be fair in this matter."

This Supervising Administrative Law Judge, after having reviewed the case files and hearing recordings pertaining to this matter, finds that Petitioner failed to provide any evidence that would warrant the recusal of ALJ Scully. ALJs are not required to issue a subpoena authorized by law unless a showing of good cause for the subpoena is established. Mich Admin Code, R 792.11010 (1). Additionally, ALJs have the authority to exercise discretion regarding the exclusion of parties, their attorneys or authorized representatives or other persons, and they have the authority to exclude irrelevant, immaterial or unduly repetitious evidence. Mich Admin Code, R 792.10106(1)(c) and 792.10125(2). Petitioner has not presented any argument to counter ALJ Scully's conclusion that Petitioner failed to establish good cause for his subpoena requests, and Petitioner failed to establish that ALJ Scully denied him his due process rights and was biased against him. Lastly, Petitioner failed to provide any evidence establishing that any of the other grounds for disqualification or recusal found in Mich Admin Code, R 792.10106(2) or (3) have been met.

**NOW, THEREFORE, IT IS ORDERED** that Petitioner's request for the recusal of ALJ Kevin Scully is denied.

MN-D/tlf

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.

**Via-Electronic Mail :**

**Hearings@michigan.gov**

**Via-First Class Mail and Electronic Mail:**

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