

STATE OF MICHIGAN
COURT OF APPEALS

MICHAEL R. NOVAK,

Petitioner-Appellee,

v

SECRETARY OF STATE,

Respondent-Appellant.

UNPUBLISHED

January 9, 1998

No. 199826

Allegan Circuit Court

LC No. 96-019991 AL

Before: MacKenzie, P.J., and Hood and Hoekstra, JJ.

MEMORANDUM.

Respondent appeals as of right from a circuit court order vacating respondent's order suspending petitioner's nonresident driving privileges for six months as a consequence of petitioner's refusal to submit to a chemical test pursuant to the implied consent law. We reverse. This case is being decided without oral argument pursuant to MCR 7.214(E).

A person who refuses to submit to a chemical test may request a hearing, which is limited to a determination of the following issues: (1) whether the peace officer had reasonable grounds to believe that the driver committed a crime described in MCL 257.625c(1); MSA 9.2325(3)(1); (2) whether the driver was arrested for the crime; (3) whether the driver unreasonably refused to submit to the test upon the officer's request; and (4) whether the driver was advised of his or her rights concerning the chemical test as set forth in MCL 257.625a(6); MSA 9.2325(1)(6). MCL 257.625f(2) and (4); MSA 9.2325(6)(2) and (4); *McMillan v Sec'y of State*, 155 Mich App 399, 402; 399 NW2d 538 (1986). After the hearing, if the driver does not prevail, then the Secretary of State may suspend the driver's nonresident operating privileges for six months. MCL 257.625f(7)(a); MSA 9.2325(6)(7)(a).

Circuit Court review of the hearing officer's determination is provided for by statute, but is limited to a review of the record prepared pursuant to § 625f to ascertain whether the hearing officer properly determined the issues enumerated in § 625f or whether a restricted license should be issued. MCL 257.323(4); MSA 9.2023(4); *McMillan, supra*, p 402.

In the instant case, petitioner requested no hearing before a hearings officer and, therefore, no record was prepared pursuant to § 625f. In the absence of such a record, the circuit court lacked

authority to review the order of suspension and to vacate respondent's order of suspension by trial de novo. *McMillan, supra*, 403-404. In the absence of a hearing, the suspension of petitioner's nonresident operating privileges was automatic. MCL 257.625f(1)(a); MSA 9.2325(6)(1)(a); *McMillan, supra*, p 404.

We vacate the circuit court order and reinstate respondent's order of suspension. We do not retain jurisdiction.

/s/ Barbara B. MacKenzie

/s/ Harold Hood

/s/ Joel P. Hoekstra