

STATE OF MICHIGAN
COURT OF APPEALS

RAJU KUTTIPURATHU MARKOSE,

Petitioner-Appellee,

v

SECRETARY OF STATE,

Respondent-Appellant.

UNPUBLISHED

September 14, 2004

No. 247267

Wayne Circuit Court

LC No. 02-241472-AL

Before: Donofrio, P.J., and White and Talbot, JJ.

PER CURIAM.

Respondent appeals by leave granted the circuit court's order reversing the decision of its Driver License Appeal Division (DLAD) hearing officer denying petitioner's petition for reinstatement of his driver's license. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Petitioner's driver's license was administratively revoked after he accumulated two alcohol-related driving offenses within seven years. MCL 257.303(2). At an administrative hearing on his petition for reinstatement of his license petitioner seemed confused as to whether he was an alcoholic, and could not say with certainty how long he had maintained sobriety after his first arrest. Petitioner submitted evidence of negative screening tests and letters attesting to his sobriety, as well as a substance abuse evaluation. The hearing officer denied the petition, concluding that petitioner had not submitted sufficient documentary proof of his abstention from alcohol, and that he needed to demonstrate a longer period of abstinence. The circuit court reversed the hearing officer's decision, finding that petitioner produced clear and convincing evidence that his alcohol problem was under control and was likely to remain under control.

A circuit court's review of an administrative decision is limited to determining whether the decision was contrary to law, was supported by competent, material, and substantial evidence on the whole record, was arbitrary or capricious, or was otherwise affected by a substantial and material error of law. Const 1963, art 6, § 28; MCL 24.306; *Boyd v Civil Service Comm*, 220 Mich App 226, 232; 559 NW2d 342 (1996). A court should accord due deference to administrative expertise, and should not invade administrative fact finding by displacing an agency's choice between two reasonably differing views. *Dignan v Michigan Public Schools Employees Retirement Bd*, 253 Mich App 571, 576; 659 NW2d 629 (2002).

We review a lower court's review of an agency decision to determine whether the lower court applied correct legal principles, and whether it misapprehended or grossly misapplied the substantial evidence test to the factual findings made by the agency. This standard is the same as the clearly erroneous standard of review. A finding is clearly erroneous when, after a review of the whole record, we are left with the firm and definite conviction that a mistake was made. *Id.* at 575-576.

A circuit court may set aside the decision of the DLAD if the petitioner's substantial rights have been prejudiced because the decision is not supported by competent, material, and substantial evidence on the whole record, or is arbitrary and capricious. MCL 257.323(4). A hearing officer's decision should be affirmed if it is supported by the requisite evidence, even if the reviewing court concludes that it would have reached a different decision. *Kester v Secretary of State*, 152 Mich App 329, 335; 393 NW2d 623 (1986).

The DLAD may not issue a license to a petitioner whose license has been revoked due to an accumulation of alcohol-related convictions unless the petitioner establishes by clear and convincing evidence that his alcohol problem is under control and is likely to remain under control, and that the petitioner is at low or minimal risk of repeating his past behavior. 1999 AACS, R 257.313(1)(a)(i)-(ii). The petitioner must show by clear and convincing evidence that he has completely abstained from the use of alcohol for at least six months. The DLAD may require a petitioner to demonstrate complete abstinence for a period longer than six months if the evidence shows that the petitioner suffered a relapse while attempting to bring his problem under control, or if a substance abuse evaluation concludes that the petitioner has a diagnosis of alcohol abuse or dependency. 1992 AACS, R 257.313(1)(b). Petitioner submitted independent sources of corroboration of abstinence for a period of perhaps as long as eighteen months, including letters, test results, and a report from his probation officer. However, petitioner's substance abuse evaluation indicated that he had a dependence on alcohol and was in early partial remission, and recommended that he attend more AA meetings in order to gain further insight into his problem. The hearing officer concluded that in light of petitioner's diagnosis of alcohol dependence, that he relapsed after a lengthy period of sobriety, that he expressed confusion as to whether he was an alcoholic, and that he could not state with certainty how long he maintained sobriety between arrests, petitioner needed to demonstrate a longer period of sustained abstinence before the state could be reasonably assured of his long-term ability to remain abstinent. The hearing officer's decision was not arbitrary or capricious. MCL 257.323(4); 1999 AACS, R 257.313(1)(a)(i)-(ii). The circuit court improperly substituted its judgment for that of the hearing officer, *Kester*, *supra*, and misapprehended and misapplied the substantial evidence test. *Dignan*, *supra*.

Reversed.

/s/ Pat M. Donofrio
/s/ Helene N. White
/s/ Michael J. Talbot