

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

James Douris, :  
: Petitioner :  
: :  
v. : No. 1377 C.D. 2009  
: :  
Department of Public : Submitted:February 5, 2010  
Welfare, :  
: :  
Respondent :

BEFORE: HONORABLE RENÉE COHN JUBELIRER, Judge  
HONORABLE MARY HANNAH LEAVITT, Judge  
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

**MEMORANDUM OPINION  
BY JUDGE COHN JUBELIRER<sup>1</sup>**

**FILED: April 6, 2010**

James Douris (Petitioner) petitions for review of an order by the Department of Public Welfare (Department) which denied his appeal of his food stamp allotment. Petitioner argues that his service dog should be counted as a member of his household for purposes of determining his food stamp allotment. Petitioner also argues that the

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<sup>1</sup> Per order of this Court dated September 14, 2009, this opinion is printed in 14-point Courier New typeface.

Department erred in not providing him with a copy of his file in a format that he could read.

Petitioner is a disabled veteran who is confined to a wheelchair. Because Petitioner wears spica splints<sup>2</sup> (splints) on both of his hands, he has difficulty using his wheelchair on his own. Petitioner, therefore, uses a service dog to pull his wheelchair. Petitioner is also unable to write due to the splints. Additionally, Petitioner suffers from diabetes mellitus and has difficulty reading print smaller than 12-point type due to vision problems resulting from his diabetes.

On December 2, 2008, Petitioner applied for food stamp benefits. Petitioner has no income. On January 4, 2009, the Bucks County Assistance Office (CAO) sent Petitioner a notice advising him that he would receive a monthly food stamp allotment of \$176.00 effective January 1, 2009. Petitioner appealed the CAO's determination on February 2, 2009, asserting that this allotment was not sufficient for Petitioner to feed himself and his service dog. A hearing was held before an Administrative Law Judge (ALJ) for the Department on May 7, 2009. At the

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<sup>2</sup> A spica splint is a type of splint which immobilizes the thumb, but leaves the fingers free.

hearing Petitioner testified that, in addition to dog food, he also feeds his dog meat, poultry, vegetables, and everything Petitioner eats. (ALJ Hr'g Tr. at 51.) Petitioner argued that he needed a greater allotment of food stamps both for his service dog and because Petitioner has diet-controlled diabetes. Petitioner argued that his service dog should be considered a dependent member of his household for the purpose of determining his food stamp allotment. Petitioner also argued that the CAO and the Department discriminated against him by failing to provide him with a food stamp application and a copy of his file in a typeface large enough for him to read.

Petitioner's former caseworker, Susan Gravez, testified on behalf of the CAO. Ms. Gravez testified that Petitioner was receiving the maximum food stamp allotment for a one-person household.

On June 25, 2009, the Department issued its adjudication denying Petitioner's appeal. The Department explained that, according to the United States Department of Agriculture's (USDA) food stamp regulations, in order to qualify as a member of an individual's household, a person must be a United States citizen and have a social

security number. The Department further explained that, because Petitioner's service dog is not a United States citizen and does not have a social security number, the service dog is not eligible to be counted as a member of Petitioner's household for the purpose of calculating Petitioner's food stamp benefits.

On July 8, 2009, Petitioner submitted his Petition for Rehearing and Reconsideration (Reconsideration Petition). In his Reconsideration Petition, Petitioner argued that the Department and the CAO violated his right to a fair hearing, as set forth in 7 C.F.R. § 273.15(p)(1), by failing to provide him with copies of the CAO's exhibits in print large enough for him to read. Petitioner argued that his right to equal protection was also violated because other food stamp applicants are given documents they can read when they appeal their food stamp eligibility determinations. Additionally, Petitioner argued that denying his service dog dependent status discriminates against him as a handicapped individual because he requires the dog's services due to his handicaps. The Department denied Petitioner's

Reconsideration Petition. Petitioner now petitions this Court for review.<sup>3</sup>

Before this Court, Petitioner argues that: (1) his service dog should be considered a dependent member of his household for purposes of determining his food stamp allotment; and (2) the Department violated Petitioner's rights under the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12101-12213, and USDA regulations by consistently failing to provide Petitioner with documents with larger type that he would be capable of reading. We will address these arguments, in turn, below.

Petitioner first argues that his service dog should be counted as a member of his household because the service dog is essential to his daily life and meets the definition of a dependent as "[o]ne who needs another for food [and] shelter." (Petitioner's Br. at 9.) While this Court is sympathetic to Petitioner's circumstances, his arguments on this point are without merit. Pennsylvania's Food Stamp Program is generally governed by federal

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<sup>3</sup> This Court's "scope of review is limited to determining whether constitutional rights were violated, whether the adjudication is in accordance with the law and whether necessary findings of fact are supported by substantial evidence." McBride v. Department of Public Welfare, 960 A.2d 203, 205 n.3 (Pa. Cmwlth. 2008).

regulations. 55 Pa. Code § 501.1. Under federal food stamp regulations, food stamp benefits are based, in part, on household size. 7 C.F.R. § 273.10(e)(2)(ii)(A). Federal regulations define a "household" as follows:

A household is composed of one of the following individuals or groups of individuals, unless otherwise specified in paragraph (b) of this section:

(1) An individual living alone;

(2) An individual living with others, but customarily purchasing food and preparing meals for home consumption separate and apart from others; or

(3) A group of individuals who live together and customarily purchase food and prepare meals together for home consumption.

7 C.F.R. § 273.1(a). The United States Supreme Court has recognized that the term "individual" generally means individual human beings. Clinton v. City of New York, 524 U.S. 417, 428 n.13 (1998). See also, 1 U.S.C. § 8(a) (specifying that, in interpreting, inter alia, federal agency regulations, the term "'individual' shall include every infant member of the species homo sapiens who is born alive at any stage of development").<sup>4</sup> Because

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<sup>4</sup> Moreover, as the Department points out, individual household members must be citizens or qualified aliens. 7 C.F.R. § 273.4(a). A dog can be neither. As further indication that food stamp benefits are not intended to

Petitioner's service dog is not a human, it is not eligible to be counted as an individual member of Petitioner's household for the purpose of calculating Petitioner's food stamp benefits.<sup>5</sup>

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cover service animals, 7 U.S.C. § 2012(c) categorizes a service dog as a prosthetic, defining "allowable medical expenses" to include "prosthetics (including the costs of securing and maintaining a seeing eye dog)." 7 U.S.C. § 2012(c). Therefore, although Petitioner's costs for maintaining his service dog may be deducted from his income for the purposes of calculating his food stamp eligibility per 7 U.S.C. § 2014(e)(5)(A), the service dog is not to be considered an individual in Petitioner's household.

<sup>5</sup> Petitioner also argues that, by denying food stamps for his service dog, the Department is killing his dog, thereby violating Section 5511 of the Crimes Code, 18 Pa. C.S. § 5511, relating to cruelty to animals; and that because he needs his service dog due to his disability, the Department is discriminating against him as a disabled individual by denying him an extra food stamp allotment for his service dog. These arguments are without merit. Section 5511 is a provision of the Crimes Code and does not have any bearing on Petitioner's food stamp allotment. With regard to Petitioner's argument that the Department is discriminating against Petitioner as a disabled individual by refusing to include his service dog as a household member, we note that the ADA "requires only 'reasonable modifications' that would not fundamentally alter the nature of the service provided." Tennessee v. Lane, 541 U.S. 509, 532 (2004) (emphasis added). Extending food stamp benefits to non-humans would fundamentally alter the nature of the food stamp program.

This Court is sympathetic to Petitioner's argument that his service dog is a necessity for him due to his disability, and that he lacks the funds to properly feed his service dog. We hope that there is some other state or federal program that might provide for the maintenance and upkeep of Petitioner's service dog, and that the Department or the CAO would be able to work with Petitioner in finding such a program. However, it is unambiguously clear from the provisions cited above that food stamp benefits are intended for humans only.

We now turn to Petitioner's argument that the Department violated the ADA at 42 U.S.C. § 12132 and USDA regulations at 7 C.F.R. §§ 272.6(a), 273.15(p)(1), by failing to provide him with copies of the documents to be introduced at his hearing before the ALJ in a typeface large enough for him to read. Petitioner also argues that the Department violated Petitioner's due process rights because, despite Petitioner's repeated requests, it did not provide him with larger-format copies of the documents to be introduced at Petitioner's hearing. The Department's regulations at 55 Pa. Code § 275.3(a)(3) provide that an individual appealing a food stamp determination has the right "[t]o examine prior to the hearing . . . documents which the county office,



administering agency or social service provider will introduce as evidence in the hearing as well as the contents of the case files." 55 Pa. Code § 275.3(a)(3).

It is extremely troubling that the Department was either unable or unwilling to provide Petitioner with larger-format copies of the documents to be introduced at his hearing. However, even assuming this conduct denied Petitioner his right to due process, in this case, it amounts to harmless error. "Demonstrable prejudice is a key factor in assessing whether procedural due process was denied. An order of an administrative agency will not be disturbed for harmless error." Pennsylvania Bankers Association v. Pennsylvania Department of Banking, 981 A.2d 975, 996 (Pa. Cmwlth. 2009) (citations omitted). This Court does not wish to, in any way, sanction the Department's conduct in failing to accommodate Petitioner's disability. However, after reviewing the record, as well as the law cited above, this Court is convinced that even with full and complete access to the documents to be introduced at the hearing, there is no argument Petitioner could have made that would have resulted in a favorable decision for him. As discussed above, the law is clear that animals, even service animals, are not intended to be included as individuals to

be counted as part of a household for purposes of food stamp benefit allocation. Therefore, we will not remand this case to the Department for a new hearing.<sup>6</sup>

Accordingly, the Department's adjudication is affirmed.

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**RENÉE COHN JUBELIRER, Judge**

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<sup>6</sup> Although we conclude that any violations of the ADA and the Department of Agriculture's regulations amount to harmless error in this case with respect to Petitioner's due process rights, we note that these laws have their own enforcement provisions. See 42 U.S.C. § 12133 (providing remedies for violations of Title II of the ADA); Lane (holding that Title II of the ADA, pertaining to discrimination by states, is a valid application of Congress's power under the Fourteenth Amendment and, therefore, abrogates the states' Eleventh Amendment immunity from suit); 7 C.F.R. § 272.6(b), (c) (outlining procedures for filing a complaint regarding discrimination in the administration of a state's food stamp program).

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O R D E R

**NOW**, April 6, 2010, the order of the Department of Public Welfare in the above-captioned matter is hereby **AFFIRMED**.

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RENÉE COHN JUBELIRER, Judge