

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Paula M. Libby, BS,	:	
	:	
Petitioner	:	
	:	
v.	:	
	:	
	:	
Department of Public Welfare,	:	No. 1880 C.D. 2009
	:	
Respondent	:	Submitted: August 20, 2010

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE PATRICIA A. McCULLOUGH, Judge
HONORABLE JOHNNY J. BUTLER, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION BY
JUDGE BUTLER

FILED: October 14, 2010

Paula M. Libby, BS (Libby), pro se, petitions for review of the July 22, 2009 order of the Department of Public Welfare, Bureau of Hearings and Appeals (DPW) affirming the decision of the administrative law judge (ALJ) dismissing her appeal. The sole issue before this Court is whether the ALJ erred by dismissing Libby's appeal as moot.¹ For the following reasons, we affirm DPW's decision.

Libby was eligible for and received food stamp benefits from DPW beginning in June of 2008. By letter issued January 30, 2009, DPW notified Libby that her food stamp benefits would be discontinued effective January 31, 2009, since she failed to properly complete the process to recertify her eligibility.² Libby

¹ On appeal, Libby's raises numerous specific issues. Only the issues raised as to the conduct of the July 16, 2009 hearing before the ALJ and the purported termination of Libby's food stamp benefits effective January 31, 2009, which are the matters before us, will be addressed.

² According to DPW:

appealed the termination of her food stamp benefits. A hearing was held before an ALJ on July 16, 2009, after which the ALJ dismissed Libby's appeal as moot because her food stamp benefits were not terminated at that time. By order issued July 22, 2009, DPW affirmed the ALJ's decision. Libby appealed to this Court.³

Libby takes issue with the manner of DPW's dismissal of this appeal. However, the record in this case clearly supports DPW's action. At the time the facts related to this case arose, Libby had pending before DPW Appeal #250273453-009M (prior appeal), relating to her cash assistance and Medicaid benefits.⁴ Notes of Testimony, July 16, 2009 (N.T.), at 23-25, 31, 39. While she awaited a decision on the prior appeal, Libby's food stamp benefits period expired on January 31, 2009, and DPW's system automatically generated the January 30, 2009 termination notice. N.T. at 23, 25. In light of the pending appeal, however, DPW voided that notice and reinstated Libby's food stamp benefits pending the outcome of the prior appeal. N.T. at 23-26, 30-31. DPW stated, and Libby agreed, that she, in fact, received her February food stamp benefits without interruption on February 7, 2009. N.T. at 27-

The [County Assistance Office] establishes a period of time an individual . . . is eligible to receive [food stamp] benefits. This eligibility period is called a certification period. A certification period is based on calendar months. [See 7 C.F.R. § 273.10(f)]. The general rule is that [food stamp] benefits stop at the end of a certification period unless the client completes a recertification of eligibility which consists of a recertification form, an interview and submission of required verification.

DPW Br. at 3 n.1.

³ Our scope of review in an appeal from a DPW adjudication is limited to a determination of whether constitutional rights were violated, errors of law were committed, or necessary findings of fact were not supported by substantial evidence. *Burroughs v. Dep't of Pub. Welfare*, 606 A.2d 606 (Pa. Cmwlth. 1992).

⁴ By the time of the hearing in the instant matter, a hearing had been conducted as to the prior appeal, but no decision had been rendered at that time. N.T. at 25, 30.

28, 31, 36. The January 30, 2009 notice from DPW did not, therefore, result in the termination of her food stamp benefits as Libby claims.

The decision on the prior appeal, rendered in February of 2009, ultimately resulted in the termination of all of Libby's benefits, including food stamps, effective February 28, 2009. N.T. at 25, 38; Libby Br. at 8-9; DPW Br. at 4. Libby requested reconsideration of that decision, which was denied. DPW Br. at 4 n.1. On June 18, 2009, Libby filed a petition for review of that decision with this Court at No. 1217 C.D. 2009. DPW filed a motion to dismiss Libby's appeal as untimely filed, which this Court granted by order of June 15, 2010. On July 16, 2010, Libby appealed to the Pennsylvania Supreme Court at No. 377 WAL 2010. Libby has attempted to relate the circumstances of the prior appeal to this case by arguing that her failure to get food stamp benefits after February of 2009, was due to DPW's misrepresentations about the termination of her food stamp benefits, rather than the decision on her prior appeal. However, there was no evidence on the record to support this argument.

The issues Libby raises on appeal that specifically relate to the matter before us are that the ALJ erred in presiding over this hearing since she also presided over the prior appeal, and that the ALJ erred by failing to properly conduct the July 16, 2009 hearing. Based upon our review of this record, we hold that Libby's arguments are without merit.

The record is clear that the ALJ properly conducted the July 16, 2009 hearing. The fact that the ALJ presided over both the instant appeal and the prior appeal is not unlawful. *See Commonwealth v. Bryant*, 476 A.2d 422 (Pa. Super. 1984). Further, the fact that the ALJ ruled against Libby on both appeals does not require a finding that Libby was prejudiced by the ALJ hearing the instant appeal. In

addition, pursuant to Section 275.4(g)(1)(ii) of DPW's regulations, 55 Pa. Code § 275.4(g)(1)(ii), when the hearing commenced, the ALJ confirmed the issue to be considered and Libby agreed. Also, pursuant to Section 275.4(f)-(g) of DPW's regulations, 55 Pa. Code § 275.4(f)-(g), the ALJ swore in the witnesses, gave both the DPW witness and Libby the opportunity to present their evidence and cross-examine one another, and to summarize their positions. Although the tape of the hearing ran out during Libby's final statement, she appears to have been making a verbal appeal of the proceeding and, since Libby had the right to appeal DPW's decision and clearly did so, she was not prejudiced thereby.

Finally, in accordance with Section 275.4(f)(2) of DPW's regulations, 55 Pa. Code § 275.4(f)(2),⁵ the ALJ obtained from the parties evidence and testimony pertaining to the issue before her. The ALJ told Libby throughout the July 16, 2009 hearing that since, by her own representation, the instant appeal related solely to the January 31, 2009 notice purportedly terminating her food stamp benefits, she was compelled to consider only those facts, and that any facts related to her prior appeal, especially those that occurred after the filing of the instant appeal, were outside her jurisdiction. N.T. at 8, 16, 26, 28-30, 33-36, 39-40, 42-46, 48-49. In the interest of being thorough, however, the ALJ briefly recessed the July 16, 2009 hearing to check the status of the prior appeal, and accepted Libby's exhibits and statements about the

⁵ Section 275.4(f)(2) of DPW's regulations specifically states:

(f) . . . The responsibilities of the hearing officer in conducting the hearing are as follows:

. . . .

(2) To obtain from the appellant and agency staff members relevant testimony pertaining to the issues in question and to limit the testimony to that which has bearing on the issues involved.

prior appeal for whatever probative value they may have for this case. N.T. at 12-23, 36, 41-42. Thus, even Libby's allegations that the ALJ refused to allow her to present evidence and make argument about the prior appeal have no basis.

Since the January 30, 2009 notice of termination upon which the instant appeal is based was subsequently voided and Libby's benefits continued uninterrupted, the ALJ properly dismissed the instant appeal, and DPW properly affirmed that decision. DPW's July 22, 2009 order is, therefore, affirmed.

JOHNNY J. BUTLER, Judge

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ORDER

AND NOW, this 14th day of October, 2010, the July 22, 2009 order of the Department of Public Welfare, Bureau of Hearings and Appeals is affirmed.

JOHNNY J. BUTLER, Judge