

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

M. J. Z-C.,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 2547 C.D. 2009
	:	Submitted: June 25, 2010
Department of Public Welfare,	:	
	:	
Respondent	:	

BEFORE: HONORABLE DAN PELLEGRINI, Judge
HONORABLE ROBERT SIMPSON, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE SIMPSON

FILED: August 25, 2010

In this appeal, Petitioner, representing herself, seeks review from a final decision of the Department of Public Welfare (DPW), Bureau of Hearings and Appeals (BHA) affirming a decision by an administrative law judge (ALJ). The ALJ dismissed as moot Petitioner’s appeal from medical assistance (MA) “discontinue notices,” after a County Assistance Office (current CAO) rescinded the notices. Finding no error, we affirm.

DPW, through the current CAO, provided Petitioner, her daughter, and Petitioner’s husband, with MA. In September 2009, the current CAO issued Petitioner two notices (collectively, Discontinue Notices) stating that CAO was discontinuing husband’s and daughter’s MA on September 23, 2009. The current CAO based both MA terminations on Petitioner’s failure to provide two income related documents.

Petitioner appealed to BHA. She challenged the current CAO's decision to discontinue MA. She also raised a number of other issues, not directly connected with the Discontinue Notices. In her notice of appeal, Petitioner asked BHA for the following accommodation:

The hearing will be in 'writing' based upon the briefs submitted by [Petitioner] due to her disability of 'Bipolar Disorder;' 'Paranoid Disorder;' 'Hypergraphia;' and 'Sleep Apnea.' Discovery will be needed and information requested to the ALJ from [the current] CAO.

Certified Record, Item #4, Petitioner's Brief before the ALJ (ALJ Brief), Ex. 4, Notice of Appeal at 2. BHA assigned the matter to an ALJ, who scheduled a telephonic hearing and provided Petitioner with notice of the hearing.

In response, Petitioner sent the ALJ a letter, reiterating her request to not participate in the hearing:

Due to both my husband and my mental impairments (I can provide documentation from medical doctors about my psychiatric conditions, if needed) it is not as easy for me to communicate over the telephone. I get overwhelmed and forget the points I am trying to make. The most effective way for me to present these issues is for [me] to do so in writing.

In the past, an incident which occurred between an ALJ, [the prior] County, and myself, via telephone, left me feeling like I was railroaded into being coerced into either withdrawing [my] hearing, or having a decision that became a "moot" issue. So, in all practicality, and fairness, I would like all the issues heard, as to why I believe (1) an [sic] MA discontinue [n]otice was sent to [me]; and further had been (2) unfairly stopped, in writing, by way of submitted a brief, which can be done and sent to your office on November 16, 2009.

ALJ Brief, Exhibit 20, Letter from Petitioner to ALJ, 11/8/09, at 1-2.

Before the hearing, Petitioner submitted her ALJ Brief, which included 21 exhibits spanning approximately 118 pages. The exhibits included two notices from the current CAO, dated October 28, 2009, to the husband and the daughter respectively, indicating that the CAO reinstated MA benefits for each as of September 24, 2009, one day after the effective date of the Discontinue Notices.

In her ALJ Brief, Petitioner conceded that her challenge to the Discontinue Notices was “no longer the issue at hand.” ALJ Brief, at 3. She acknowledged “the [family members were] now receiving medial benefits.” Id. Nonetheless, she asked the ALJ to address the other issues “because they are relevant to the ... Discontinue Notice[s] [the current CAO] sent ... on September 11, 2009.”¹ Id.

¹ In her notice of appeal to the ALJ, Petitioner: (1) challenged the prior County Assistance Office handling of her records two years earlier; (2) challenged her need to report income semiannually; (3) “Cross-Appeal[ed] for DPW and ... [the current] CAO retaliating against [Petitioner] for filing” a federal lawsuit; (4) “Cross-Appeal[ed] due to DPW and ... CAO discriminating against [Petitioner] due to her mental disability which violates Title II of the American with Disabilities Act of 1990 [42 U.S.C. §§12131-65]; and 504 of the Rehabilitation Act of 1973 [29 U.S.C. §§701-97(b)]”; and (5) argued the DPW violated various sections of the DPW’s nondiscrimination regulations at 55 Pa. Code §§107.1-.4. Notice of Appeal at 2.

In her ALJ Brief, Petitioner reiterated averments that DPW and the current CAO may have purposefully discontinued her benefits in retaliation for a federal law suit she brought against DPW and the prior County Assistance Office. She also argued that the (1) the current CAO and DPW violated her due process rights, and 55 Pa. Code §275.4(a)(3)(v)(C)(1) by terminating her benefits during the pendency of her appeal; and (2) the current CAO violated 55 Pa. Code §201.3 by terminating her benefits more than 15 days after receiving a re-application for medical benefits.

At the outset of the hearing, the ALJ stated his intention to telephone Petitioner to participate. However, he acknowledged her accommodation request and granted it. He “agree[ed] to accept her brief and enter [it] into the record and decide the case accordingly.” ALJ Hearing, Notes of Testimony (N.T.) 11/18/09, at 6-7. The ALJ then heard testimony telephonically from a CAO income maintenance caseworker supervisor (Supervisor).

Supervisor testified that after receiving Petitioner’s appeal document, the current CAO opened the case, determined that it erred in issuing the Discontinue Notices, and rescinded them. He acknowledged that Petitioner’s coverage in DPW’s Health Maintenance Organization (HMO) ceased on September 23, 2009. He testified, however, that the medical coverage was “immediately [reinstated], and there was no loss in [medical] coverage” for the daughter. N.T. at 7. This coverage was effective September 24, 2009. Id.

The ALJ concluded Petitioner’s appeal was moot because DPW rescinded the notices on which Petitioner based her appeal. Additionally, the ALJ concluded Petitioner’s other issues were not properly before him because they did not arise from the Discontinue Notices. BHA affirmed the ALJ’s final order. Petitioner now petitions for review to this Court.

Petitioner raises several relevant issues before the Court: (1) the ALJ erred in applying the mootness doctrine; (2) the ALJ violated her due process rights by issuing a decision without giving her a chance to respond to what CAO asserted; and, (3) CAO improperly terminated her daughter’s coverage while her

appeal was pending.² Petitioner seeks the following relief:

91. A decision needs to be made against [DPW] for violating the [Petitioner's] due process rights, when DPW cut off the medical benefits of [her daughter], in spite of the fact a timely appeal was made, to deter this conduct from ever happening to anyone else, and to stop this from continually happening against the [Petitioner's family].

92. Other relief is warranted, but due to the lack of knowledge as to what the relief is or could be, the [Petitioner] will leave that up to the discretion of the [t]rier of facts, pertaining to this case.

93. If this case should be in another forum, due to the relief which the [Petitioner is] requesting, then the [Petitioner] request[s] instructions as to what forum that would be, and to have a judgment which would not preclude [Petitioner] from filing suit in the other forum, or alternatively transfer this case to the appropriate Court.

94. This Appeal has cost [Petitioner] an unnecessary amount of money, which [Petitioner] request[s] to be taxed against [DPW] and to reimburse [Petitioner] for not only the costs of this appeal, but if it is in the Court's power, monetary relief as to the emotional stress this has caused the [family], and has put a strain on their disabilities.

Petitioner's Brief at 32-33.³

² Petitioner identifies nine issues in her brief. Some are variations of these three issues. Others are variations of the discrimination and retaliation issues referenced in filings before the ALJ. Petitioner also argues the ALJ should have addressed Petitioner's exemption request from semiannual income reporting requirements, as well as a separate discontinue notice CAO issued on November 11, 2009.

³ This Court's review of an adjudication by DPW is limited to whether an error of law was committed, whether findings of fact were supported by the evidence, or whether **(Footnote continued on next page...)**

I. Mootness

Petitioner first contends the ALJ erred in finding the case moot. Petitioner argues that she raised several different issues in her appeal request and in her brief, and that these issues are therefore ripe for review. She also contends “that the irresponsible behavior by DPW has already repeated itself against the [family] in their ample attempts to erroneously sever their rightful medical benefits and will occur again absent an opinion by this Court.” Petitioner’s Brief at 5.

“The Court will dismiss an appeal as moot unless an actual case or controversy exists at all stages of the judicial or administrative process.” Horsehead Res. Dev. Co., Inc. v. Dep’t of Env’tl. Prot., 780 A.2d 856, 858 (Pa. Cmwlth. 2001). Courts have made an exception to this principle where (1) the conduct complained of is capable of repetition yet likely to evade review, (2) the case involves issues important to the public interest, or (3) a party will suffer some detriment without the court's decision. Musheno v. Dep’t of Pub. Welfare, 829 A.2d 1228 (Pa. Cmwlth. 2003).

DPW regulations provide that “every person ... receiving ... medical assistance [has] the right to appeal from a Departmental action or failure to act and to have a hearing if he is dissatisfied with a decision ... discontinuing assistance” 55 Pa. Code §275.1.

(continued...)

constitutional rights were violated. Perna ex rel. Bekus v. Dep’t. Pub. Welfare, 807 A.2d 310 (Pa. Cmwlth. 2002).

Here, Petitioner challenged the Discontinue Notices. CAO conceded its error, rescinded the Discontinue Notices, and reinstated benefits prior to the ALJ hearing. Before the hearing, Petitioner acknowledged her family members were again receiving MA. Under these circumstances, the ALJ appropriately determined there was no longer a case or controversy related to the Discontinue Notices.

The scope of the proceeding before the ALJ was limited to the current CAO's discontinuance of MA benefits for the husband and the daughter as established in the Discontinue Notices. Petitioner offers no meaningful argument that her additional issues fall within that scope.⁴

Underlying many of the issues is Petitioner's overarching averment that the current CAO's actions are part of a larger course of conduct by DPW to retaliate and discriminate against Petitioner. Petitioner repeatedly references her counseled federal lawsuit filed in the U.S. District Court for the Middle District of Pennsylvania, and now pending in the U.S. Court of Appeals for the Third Circuit. Petitioner's Brief at 12; ALJ Brief, Ex. 12, Amended Complaint in 04-CV-0026 (M.D. Pa.). She analogizes the present situation to that case. She argues that the

⁴ For instance, in her notice of appeal before the ALJ, Petitioner raised an issue as to the prior County Assistance Office withholding documents from her several years earlier. While such actions may have provided a basis for an appeal of that decision, at that time, before the prior County Assistance Office, they have no clear bearing on this case.

Similarly, in her Appellate Brief, Petitioner argued the ALJ erred in not addressing a separate termination of benefits notice sent on November 11, 2009, in which the current CAO discontinued the daughter's MA benefits because she turned 21. This is clearly a different notice than the Discontinue Notices. It raises a different issue which is not appropriately resolved in this proceeding.

current CAO's denial of benefits is a repetition of similar denials by DPW and the prior County Assistance Office. She contends DPW and the current CAO will continue to repeatedly deny her benefits absent legal intervention.

Petitioner essentially seeks to use the repetition exception to mootness as a procedural means for expanding and trying her federal case in this proceeding. These claims fall well outside the limited scope of the proceeding before the ALJ. The repetition exception is not a means to expand jurisdiction where it otherwise would not lie.

We conclude the ALJ did not err in declining to address these additional claims.

II. Due Process

Petitioner argues the ALJ violated her due process rights by conducting a hearing without her involvement. She argues the ALJ denied her an opportunity to object to the CAO witness. Additionally, she argues the ALJ erred by failing to follow DPW procedures for telephonic testimony.

Due process requires an adjudicatory body provide a person with notice and an opportunity to be heard prior to an adjudication affecting that person's rights. Burch v. Dep't of Pub. Welfare, 815 A.2d 1143 (Pa. Cmwlth. 2002). It does not confer an absolute right to be heard. Id.

Due process is a flexible notion, not a technical one, and imposes only

such procedural safeguards as the situation warrants. Dep't of Transp. v. Clayton, 546 Pa. 342, 351, 684 A.2d 1060, 1064 (1996); Fountain Capital Fund, Inc. v. Pa. Sec. Comm'n, 948 A.2d 208 (Pa. Cmwlth. 2008), appeal denied, 600 Pa. 765, 967 A.2d 961 (2009). DPW regulations provide clear procedures for ensuring that parties are afforded due process. See generally, 55 Pa. Code §275.4.⁵

Here, we conclude the ALJ afforded Petitioner all process due. The ALJ provided Petitioner with written notice and an opportunity to be heard. She responded to the notice with her accommodation request. The ALJ stated at the start of the hearing his intent to have Petitioner participate in the hearing. However, he acknowledged Petitioner's accommodation request and granted it. The ALJ incorporated Petitioner's written submission into the record, stated that he would give it appropriate consideration, and did so.

Petitioner provides no authority that her written request to participate in writing required the current CAO to present its case in writing as well.⁶

⁵ These procedures allow the appellant the opportunity to be present and to identify the issues at the start of the hearing, before the ALJ hears any evidence. 55 Pa. Code §275.4(g)(1)(ii). Appellants are given the opportunity to cross-examine agency witnesses. 55 Pa. Code §275.4(g)(1)(iv). Appellants are also given the opportunity to present their own case and witnesses. 55 Pa. Code §275(g)(1)(v)-(vi). Lastly, ALJs are required to ask appellants if they have completed presenting their case and whether the appellant would like an additional opportunity to speak. 55 Pa. Code §275.4(g)(1).

⁶ The only authority Petitioner cites is a DPW website containing telephonic testimony rules. See DPW, Procedure for Telephonic Testimony in Formal Cases, <http://www.dpw.state.pa.us/About/HearingsAppealsProc/003679491.htm> (last visited 7/28/10). Petitioner argues that these rules require an ALJ to provide notice prior to a hearing that testimony will be taken telephonically. Additionally, these rules allow Petitioner to object to the ALJ hearing testimony telephonically. She argues the ALJ did not comply with these rules. **(Footnote continued on next page...)**

Additionally, her inability to object to the CAO witness is a direct result of her request not to be present by telephone during the hearing.

We discern no error of law or abuse of discretion in how the ALJ handled this matter, and we conclude the ALJ afforded Petitioner due process.

III. Termination of Benefits Prior to Hearing

Lastly, Petitioner argues the current CAO violated her rights when it terminated her medical benefits prior to a hearing. In support, Petitioner cites documents from her pharmacy showing that the pharmacy declined to fill her daughter's prescriptions on four occasions between October 24 and October 28, 2009, ostensibly because she lacked coverage.

DPW regulation 55 Pa. Code §275.4(a)(3)(v)(C) requires county assistance offices to continue a petitioner's benefits during the pendency of an appeal.

Here, while the ALJ did not directly address the pharmacy denials, the evidence offered by Petitioner is consistent with Supervisor's testimony that the daughter continued to have coverage.

(continued...)

We note this website contains no indication where these regulations have been promulgated—there is no cite to the Pennsylvania Code. Nonetheless, the website does additionally provide that these telephonic rules apply only to formal cases. The website indicates that an individual recipient's challenge of benefits is not a formal appeal. See DPW, Formal Appeals, <http://www.dpw.state.pa.us/About/HearingsAppealsProc/003670058.htm> (last visited 7/28/10). Accordingly, these rules do not apply to the current proceeding.

Although Supervisor testified the current CAO immediately reinstated MA, he acknowledged that from September 24, 2009, through most of October 2009, the daughter's coverage was through the DPW's Access program and not through the HMO program. It is not clear that the current CAO office informed Petitioner she needed to use her daughter's Access card, instead of the HMO card previously used.⁷

Petitioner notes that she spoke with Supervisor on October 27, 2009, after the pharmacy indicated she was not covered. She wrote that the Supervisor "ran all of the family members in his computer, and reassured [Petitioner] that" CAO reinstated medical benefits for all her family members. ALJ Brief, at 11. Petitioner acknowledges receiving a letter from the current CAO in late October, indicating that her daughter was once again included in the HMO coverage. Petitioner does not raise any coverage issues after October 28, 2009.

We conclude Petitioner has not established any basis for relief for termination of her daughter's benefits prior to a hearing. Petitioner does not specify the relief she is seeking for the alleged violation, and she provides no legal authority for any relief. Additionally, while the record shows that the current CAO's communications with Petitioner may have been imperfect, it does not establish that the current CAO terminated the daughter's MA during the appeal. There is no indication that Petitioner or a family member was harmed. Petitioner

⁷ Petitioner avers she used Daughter's Access number at one pharmacy on October 27, 2009, but the pharmacy determined she was not covered. However, the document Petitioner relies on to support this averment does not clearly show that Petitioner used her Daughter's Access number or card. ALJ Brief, Ex. 5 at 2.

acknowledged that the current CAO restored the MA benefits, and Petitioner has not averred any ongoing coverage issues.

Under these circumstances, we see no basis to reverse.

IV. Conclusion

For all these reasons, we find no error in BHA's final decision. The additional issues raised in Petitioner's ALJ Brief are not resolved on the merits because they were not properly joined to the appeal from the Discontinue Notices. In essence, the other issues could not be raised in this appeal. Petitioner may seek advice from her attorney in the federal proceedings as to which forum may entertain requests for other relief. Accordingly, we affirm.

ROBERT SIMPSON, Judge

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Petitioner	:	
	:	
v.	:	No. 2547 C.D. 2009
	:	
Department of Public Welfare,	:	
	:	
Respondent	:	

ORDER

AND NOW, this 25th day of August, 2010, the order of the Department of Public Welfare, Bureau of Hearings and Appeals, in the above captioned matter is **AFFIRMED**.

ROBERT SIMPSON, Judge